



CITY OF BUFFALO
DEPARTMENT OF LAW

EXHIBIT

I

ORIGINAL

VIDEO DEPOSITION
KYLE T. MORIARTY

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

JAMES C. KISTNER,

Plaintiff,

- vs - Civil Action No.
18-cv-402

THE CITY OF BUFFALO,
c/o Corporation Counsel,
BYRON LOCKWOOD, individually and in
his capacity as Police Commissioner
of the Buffalo Police Department,
DANIEL DERENDA, individually and in his
capacity as Police Commissioner of the
Buffalo Police Department,
LAUREN McDERMOTT, individually and
in her capacity as a Buffalo Police Officer,
JENNY VELEZ, individually and in her
capacity as a Buffalo Police Officer,
KARL SCHULZ, individually and in his
capacity as a Buffalo Police Officer,
KYLE MORIARTY, individually and in his
capacity as a Buffalo Police Officer,
DAVID T. SANTANA, individually and in his
capacity as a Buffalo Police Officer,
JOHN DOE(S), individually and in his/their
capacity as a Buffalo Police Officer(s),

Defendants.

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MAR 06 2020

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1 Video deposition of KYLE T. MORIARITY,
2 Defendant, taken pursuant to the Federal Rules of
3 Civil Procedure, in the offices of JACK W. HUNT &
4 ASSOCIATES, INC., 1120 Liberty Building, Buffalo,
5 New York, on February 21, 2020, commencing at
6 10:09 a.m., before ANNE T. BARONE, RPR, Notary
7 Public.

8

9 APPEARANCES: RUPP BAASE
10 PFALZGRAF & CUNNINGHAM, LLC,
11 By CHAD DAVENPORT, ESQ.,
12 1600 Liberty Building,
13 Buffalo, New York 14202,
14 (716) 854-3400,
15 davenport@ruppbaase.com,
16 Appearing for the Plaintiff.

17

18 TIMOTHY A. BALL, ESQ.,
19 Corporation Counsel,
20 By MAEVE E. HUGGINS, ESQ.,
21 Assistant Corporation Counsel,
22 1137 City Hall,
23 Buffalo, New York 14202,
24 (716) 851-4334,
25 mhuggins@city-buffalo.com,
26 Appearing for the Defendants.

27

28 PRESENT: JAMES KISTNER
29
30 NOLAN HALE, Rupp Baase
31 Pfalzgraf & Cunningham, LLC
32
33 TIMOTHY M. HUNT, CLVS, Videographer

34

09:43:42

10:07:53 1 **THE REPORTER:** Read and sign?

10:07:56 2 **MS. HUGGINS:** 45 days, please.

10:07:57 3 **THE REPORTER:** And Ms. Huggins will be

10:08:00 4 supplied?

10:08:00 5 **MR. DAVENPORT:** Yes.

10:08:01 6 **THE REPORTER:** Thank you.

10:08:01 7

10:09:53 8 **K Y L E T. M O R I A R I T Y,** 695 Main Street,

10:10:06 9 Buffalo, New York, after being duly called and

10:10:06 10 sworn, testified as follows:

10:10:11 11

10:10:11 12 **EXAMINATION BY MR. DAVENPORT:**

10:10:11 13

10:10:15 14 **Q.** Good morning, Mr. Moriarity.

10:10:16 15 **A.** Good morning.

10:10:16 16 **Q.** My name is Chad Davenport. I'm an

10:10:18 17 attorney with Rupp Baase Pfalzgraf & Cunningham,

10:10:21 18 representing the plaintiff.

10:10:23 19 So we're here today to discuss a -- an

10:10:26 20 incident that happened on January 1st, 2017.

10:10:29 21 Before we start, I just want to explain

10:10:31 22 a few of the ground rules for this deposition.

10:10:33 23 So our discussion today is being transcribed

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10:10:38 1 by a stenographer. In order to have an accurate
10:10:40 2 testimony here today and an accurate record of that
10:10:43 3 testimony, I'm going to ask that you wait until
10:10:45 4 I finish any question before giving your answer.
10:10:49 5 Can you do that for me?

10:10:51 6 A. Yeah. Yeah.

10:10:51 7 Q. So, in addition, I just want to make
10:10:53 8 sure that you use verbal responses for each of the
10:10:58 9 questions that I ask of you. Head nods, shaking of
10:11:00 10 the head, neither of those will be able to appear
10:11:02 11 on our transcript, so I'm going to ask that you
10:11:05 12 respond to each question verbally. Can you do that
10:11:08 13 for me?

10:11:08 14 A. Yes.

10:11:10 15 Q. Thank you.

10:11:10 16 And if any time you don't understand
10:11:13 17 a question, if you want me to rephrase it, simply
10:11:17 18 ask me and I'm more than happy to do so. Can you
10:11:19 19 do that for me?

10:11:20 20 A. Yes.

10:11:21 21 Q. And if at any time you need to take --
10:11:23 22 take a break, you're more than welcome to. Just
10:11:26 23 let me know, let the court reporter know, and we

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10:11:29 1 can take that break for you.

10:11:30 2 A. Okay.

10:11:31 3 Q. Have you taken any drugs or alcohol
10:11:33 4 that would affect your testimony here today --

10:11:35 5 A. No.

10:11:36 6 Q. -- within the last 24 hours?

10:11:37 7 A. Sorry. No.

10:11:39 8 Q. Thank you.

10:11:40 9 Where were you born?

10:11:44 10 A. Here in Buffalo.

10:11:46 11 Q. Okay. Where do you live currently?

10:11:49 12 MS. HUGGINS: Well, form, and I would
10:11:52 13 object. He is an active duty police officer. He's
10:11:54 14 given a business address. He's currently employed
10:11:57 15 by the City of Buffalo.

10:11:58 16 MR. DAVENPORT: We're also suing them in
10:11:59 17 their individual capacity, so that means we would
10:12:02 18 have to know where their residence is as well. You
10:12:04 19 can put your objections on the record.

10:12:06 20 But you may answer. You can answer.

10:12:08 21 MS. HUGGINS: What I would -- what I would
10:12:11 22 propose to counsel is I would provide that
10:12:13 23 information, not in the form of a video deposition,

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10:12:17 1 but I --

10:12:17 2 BY MR. DAVENPORT:

10:12:17 3 Q. You can answer.

10:12:17 4 MS. HUGGINS: -- would provide that.

10:12:19 5 MR. DAVENPORT: You don't have to -- you
10:12:20 6 can't tell him to not answer that question. He can
10:12:22 7 answer that question. You can't direct him to not
10:12:25 8 answer the question.

10:12:25 9 You may answer the question.

10:12:27 10 MS. HUGGINS: Counsel, I -- I've indicated
10:12:28 11 I would provide that information to you but in --

10:12:28 12 MR. DAVENPORT: I understand that you will
10:12:30 13 provide --

10:12:30 14 MS. HUGGINS: -- another form.

10:12:31 15 MR. DAVENPORT: -- that information in
10:12:33 16 another form, but he can answer that question, and
10:12:35 17 you cannot direct him to not answer that question.

10:12:37 18 You may answer the question.

10:12:40 19 You cannot direct him to not answer the
10:12:43 20 question.

10:12:43 21 You may answer the question.

10:12:45 22 THE WITNESS: I'll keep it as 695 Main Street.

10:12:48 23 BY MR. DAVENPORT:

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10:12:48 1 Q. Is that here in Buffalo?

10:12:49 2 A. Yes.

10:12:51 3 Q. Have you served in the military?

10:12:53 4 A. Yes.

10:12:54 5 Q. Were you honorably discharged?

10:12:57 6 A. Yes.

10:12:58 7 Q. Do you have any criminal convictions?

10:13:01 8 A. No.

10:13:03 9 Q. What is your highest level of

10:13:05 10 education?

10:13:06 11 A. College. Associate's degree.

10:13:09 12 Q. And what was that associate's degree

10:13:11 13 in?

10:13:11 14 A. Criminal justice.

10:13:13 15 Q. So did you go -- did you go for your

10:13:16 16 associate's degree before or after the military?

10:13:18 17 A. After.

10:13:19 18 Q. And what years did you go for education

10:13:23 19 for your associate's degree?

10:13:24 20 A. 2014 -- or I'm sorry. 2012, 2014.

10:13:29 21 Q. And then did you go into police academy

10:13:33 22 training immediately after?

10:13:35 23 A. I went in 2015. January 2015.

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10:13:41 1 Q. So what did you do between 2014 to
10:13:45 2 2015?

10:13:45 3 A. Side jobs.

10:13:48 4 Q. Did you have a plan, after your
10:13:51 5 associate's degree, to become a police officer?

10:13:52 6 A. Yes.

10:13:53 7 Q. Where did you want to serve?

10:13:57 8 Did you have any municipality that you
10:13:59 9 wished to go to?

10:14:00 10 A. Buffalo.

10:14:01 11 Q. City of Buffalo?

10:14:02 12 A. Yeah.

10:14:02 13 Q. Did you take any training as part of
10:14:04 14 your ECC courses?

10:14:08 15 A. What do you mean by that?

10:14:09 16 Q. So with Erie County, you did some
10:14:11 17 training before you were able to enter as a city
10:14:15 18 police -- Buffalo police officer, correct?

10:14:17 19 MS. HUGGINS: Form. You can answer.

10:14:18 20 THE WITNESS: Yeah. As a pre-employment.

10:14:20 21 I paid -- paid my way through academy before I was
10:14:23 22 hired.

10:14:23 23 BY MR. DAVENPORT:

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10:14:23 1 Q. Okay. And so you started in 2015?

10:14:26 2 A. 2015, yeah.

10:14:27 3 Q. And how long did that last for? How

10:14:29 4 long was the training?

10:14:30 5 A. Six months.

10:14:30 6 Q. Six months? Okay.

10:14:32 7 So would that have been in 2016 that you

10:14:35 8 completed that training?

10:14:36 9 A. No. It was 2015.

10:14:37 10 Q. End of 2015?

10:14:39 11 Do you remember roughly what month that was?

10:14:41 12 A. January to June.

10:14:42 13 Q. Okay. So did you immediately start

10:14:50 14 working in the City of Buffalo as a police officer?

10:14:52 15 A. No. The exam -- the exam was given

10:14:58 16 three or four months after I completed academy.

10:15:01 17 Q. Okay.

10:15:01 18 A. And then I waited on the list and

10:15:04 19 waited to get hired.

10:15:05 20 Q. Okay. So when would that have been

10:15:08 21 that you had been hired?

10:15:10 22 A. November 4th of 2016.

10:15:12 23 Q. Of 2016?

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10:15:13 1 A. Yeah.

10:15:13 2 Q. Okay. So was there an interim in between
10:15:17 3 when you finished your training and before you were
10:15:20 4 hired?

10:15:21 5 Because I -- I think you said that at the
10:15:22 6 end of 2015 was when you completed that training,
10:15:25 7 correct?

10:15:25 8 A. I completed -- I completed academy in
10:15:28 9 2015.

10:15:29 10 Q. Okay.

10:15:29 11 A. June. Got hired November 4th of 2016.
10:15:35 12 Was sent back to Erie Community College for the
10:15:39 13 rest of phase 2 for academy. So firearms, there
10:15:44 14 was some more like motor vehicle stuff. There was
10:15:48 15 some other terrorism classes.

10:15:50 16 And then I came back to the Buffalo Police
10:15:54 17 unit's academy, where I went through policy
10:15:57 18 training, and I was done with that in late
10:16:02 19 December.

10:16:03 20 Q. Okay. So there's two phases then to
10:16:08 21 your training with --

10:16:10 22 A. There's two phases --

10:16:11 23 Q. Okay.

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10:16:12 1 A. -- through -- through a police academy,
10:16:16 2 yeah.

10:16:16 3 Q. Okay. So what would the first phase
10:16:18 4 consist of?

10:16:18 5 A. Article 35, penal law, drug recognition,
10:16:24 6 EVOC training, so like motor, driving stuff.

10:16:26 7 Q. Okay. And then what would the second
10:16:29 8 phase consist of?

10:16:30 9 A. Firearms. I believe there was
10:16:32 10 a terrorism class in there. There might have been
10:16:38 11 like an explosive class in there.

10:16:41 12 Q. Okay. So do you have to pass the first
10:16:44 13 phase in order to make it to the second phase, or
10:16:47 14 does everybody who enters the academy move on to
10:16:49 15 the second phase?

10:16:49 16 MS. HUGGINS: Well, form. Do you mean for
10:16:52 17 this officer in particular, his academy experience,
10:16:56 18 or in general?

10:16:57 19 MR. DAVENPORT: I'm just asking him
10:16:58 20 a general question.

10:16:59 21 MS. HUGGINS: Okay.

10:17:00 22 THE WITNESS: You have to pass every event
10:17:04 23 daily as they -- as they come through to move on to

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10:17:06 1 the next. But, yeah, you would have to pass
10:17:09 2 phase 1 to go to phase 2.

10:17:11 3 BY MR. DAVENPORT:

10:17:11 4 Q. Okay. And so you passed phase 1?

10:17:13 5 A. Yeah.

10:17:13 6 Q. Okay. So you ended phase 1 I believe
10:17:16 7 at the end of 2015, and then did you begin phase 2
10:17:20 8 during 2016? Is that how that worked?

10:17:22 9 A. So I -- I ended phase 1 in June of
10:17:27 10 2015, was hired in November 4th of 2016, completed
10:17:33 11 phase 2 by middle of December --

10:17:37 12 Q. Okay.

10:17:38 13 A. -- 2016.

10:17:40 14 Q. So you -- you wait until after you're
10:17:42 15 hired then before you begin phase 2?

10:17:43 16 A. I have to be hired to do phase 2.

10:17:46 17 Q. Okay. Okay. So from 2015, when you
10:17:51 18 completed phase 1, to beginning phase 2, did you
10:17:52 19 work at all with any City of Buffalo departments?

10:17:56 20 A. No. I entered my first semester at
10:18:00 21 Buff State, which I did not complete.

10:18:02 22 Q. Okay. And what were you going for?

10:18:04 23 A. Criminal justice.

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10:18:06 1 Q. It was criminal justice?

10:18:07 2 Would that be -- have been beyond your
10:18:10 3 associate's degree?

10:18:10 4 A. Yes.

10:18:10 5 Q. Okay. So, now, after you completed
10:18:15 6 phase 2, did you begin any training with the City
10:18:18 7 of Buffalo Police Department?

10:18:18 8 A. Yes.

10:18:22 9 Q. And what kind of training did you do
10:18:24 10 for that?

10:18:24 11 A. I did additional driving training.

10:18:31 12 I did some policy training.

10:18:39 13 I'm un -- I'm unsure of what else was on
10:18:42 14 that training.

10:18:45 15 Q. Now, would you have done --

10:18:46 16 A. Yeah, I don't remember.

10:18:47 17 Q. I'm sorry.

10:18:49 18 Would you have done that training before you
10:18:50 19 actually entered a patrol car, or would that
10:18:53 20 training have been done concurrently with some
10:18:55 21 training -- field training that you would have
10:18:58 22 received?

10:18:58 23 A. This would have been --

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10:18:59 1 MS. HUGGINS: Form. You can answer.

10:19:00 2 THE WITNESS: This would have been before.

10:19:02 3 BY MR. DAVENPORT:

10:19:02 4 Q. Okay. Did you have to complete any
10:19:04 5 courses administered by the Buffalo Police
10:19:07 6 Department before you were able to enter the field
10:19:10 7 training portion?

10:19:10 8 A. The training that I'm referring to,
10:19:12 9 yes.

10:19:13 10 MR. DAVENPORT: Okay. So I'm -- I have --
10:19:16 11 I'm not really sure what exhibit we're on at this
10:19:24 12 point. I believe, I want to say, 24, but I'm not
10:19:27 13 a hundred percent sure.

10:19:28 14 THE REPORTER: 22.

10:19:29 15 MR. DAVENPORT: 22? Okay.

10:19:30 16 So I'll have this marked as Exhibit 22.

17 The following was marked for Identification:

18 EXH. 22 Buffalo Police Academy
19 training record, two pages

20 BY MR. DAVENPORT:

10:20:06 21 Q. Sir, I'm showing -- showing you what's
10:20:08 22 been marked as Exhibit 22. Do you recognize this
10:20:10 23 document?

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10:20:10 1 A. Yes.
10:20:10 2 Q. And what do you recognize it to be?
10:20:12 3 A. This is a list of academy training that
10:20:14 4 I did with the BPD.

10:20:16 5 Q. And would you -- reading through the
10:20:19 6 document very quickly, would you agree that it
10:20:21 7 shows all courses that you've taken with the
10:20:24 8 Buffalo Police Department?

10:20:25 9 A. Up to date, yes.

10:20:31 10 Q. So now starting with the first one,
10:20:33 11 drug test policy, that was administered November 4th,
10:20:35 12 2016, to the same day, November 4th, 2016.

10:20:39 13 Was that drug test administered to you
10:20:41 14 before you started your field training?

10:20:43 15 MS. HUGGINS: Form.

10:20:45 16 THE WITNESS: No. That was -- if it -- if
10:20:47 17 it says that it's on there that day, that's --
10:20:49 18 that's the date that I did it.

10:20:51 19 BY MR. DAVENPORT:

10:20:51 20 Q. Okay.

10:20:52 21 A. Because I would -- I would have signed
10:20:53 22 something.

10:20:54 23 Q. Okay. So you also did, on the same

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10:20:58 1 day, EAP training. What would that refer to?

10:21:02 2 A. I don't know what EAP training is.

10:21:06 3 Q. Okay. What about rules and

10:21:08 4 regulations? That was also on the same day.

10:21:10 5 A. Yeah, I did that then.

10:21:11 6 Q. What would that refer to?

10:21:13 7 A. You're probably going over MOP stuff.

10:21:17 8 BPD's like operational handbook. Your uniform

10:21:23 9 regulations. Rules of wearing certain things or

10:21:29 10 speaking to, you know, a lieutenant a certain way.

10:21:35 11 That -- that type of stuff.

10:21:36 12 Q. Do you remember any specific sections
10:21:38 13 that they went over for the MOP?

10:21:42 14 And that would be referring to the

10:21:44 15 procedures -- policies and procedures.

10:21:45 16 A. The handbook, yeah.

10:21:46 17 Q. Okay.

10:21:48 18 A. No, I wouldn't remember.

10:21:49 19 Q. Okay. Did they discuss at all, you
10:21:51 20 know, how to arrest individuals?

10:21:55 21 Did they go over certain procedures for
10:21:58 22 accidents with patrol vehicles or --

10:22:00 23 MS. HUGGINS: Form. You can answer.

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10:22:01 1 THE WITNESS: It's -- it's in there.

10:22:03 2 I don't remember what we did that day.

10:22:06 3 BY MR. DAVENPORT:

10:22:06 4 Q. Okay. So you also did sexual harassment,
10:22:11 5 discrimination in the workplace. I would assume
10:22:14 6 that we all know what that is.

10:22:16 7 Rules and regulations, chapter 3, general
10:22:18 8 conduct. What does general conduct refer to in the
10:22:23 9 procedure -- policies and procedures handbook?

10:22:26 10 A. I'd have to -- I'd have to open up a --
10:22:30 11 open up the handbook.

10:22:32 12 Q. When they were going through these
10:22:34 13 sections in the handbook, did they go through the
10:22:36 14 individual sections of the handbook?

10:22:38 15 Did they go through what those provisions
10:22:40 16 said?

10:22:40 17 MS. HUGGINS: Form.

10:22:41 18 THE WITNESS: They briefly skimmed over
10:22:43 19 them, so I -- I'm -- I honestly don't know. Or
10:22:47 20 don't remember. I'm sorry.

10:22:48 21 BY MR. DAVENPORT:

10:22:48 22 Q. Did they ask if you understood what
10:22:50 23 those sections meant?

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10:22:53 1 MS. HUGGINS: Form. You can answer.

10:22:56 2 THE WITNESS: It's a long time ago. I -- I
10:22:58 3 don't remember. I'm -- I'm sorry.

10:22:59 4 BY MR. DAVENPORT:

10:23:00 5 Q. So, now, on November 23rd, you did
10:23:03 6 MOP 1 training.

10:23:05 7 A. Yep.

10:23:06 8 Q. Do you know what that refers to?

10:23:09 9 A. More MOP training on the -- on the
10:23:14 10 procedural handbook.

10:23:15 11 Q. So that's procedural handbook training?

10:23:17 12 A. Yeah.

10:23:17 13 Q. Okay. So now it's 1. Does that refer
10:23:20 14 to the first phase?

10:23:24 15 MS. HUGGINS: Form.

10:23:25 16 THE WITNESS: Maybe it's chapter 1. I'm --
10:23:29 17 I'm really un -- unsure of what --

10:23:33 18 BY MR. DAVENPORT:

10:23:33 19 Q. But this would have all been training
10:23:35 20 that you would have had to complete before -- or
10:23:37 21 while concurrently you were doing your field
10:23:39 22 training exercises; is that correct?

10:23:40 23 A. This was done prior to field training.

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10:23:42 1 Q. Okay. So, now, at what point do you
10:23:46 2 actually enter in and begin field training?
10:23:49 3 Was there a certain course that you needed
10:23:51 4 to complete on this training course outline before
10:23:54 5 you could actually enter the field?

10:24:13 6 A. It looks like there's going to be
10:24:14 7 a break between December 1st and December 29th,
10:24:19 8 where I went to phase 2.

10:24:24 9 Q. So this would have been --

10:24:26 10 A. And completed my --

10:24:28 11 Q. This would have been phase 2 of the
10:24:31 12 field training with the Buffalo Police Department,
10:24:33 13 correct?

10:24:33 14 MS. HUGGINS: Form.

10:24:34 15 THE WITNESS: I'm sorry. I'm going to be
10:24:37 16 completing phase 2 right through here.

10:24:39 17 BY MR. DAVENPORT:

10:24:39 18 Q. Okay.

10:24:39 19 A. During -- during the --

10:24:40 20 Q. So from November 4th to --

10:24:43 21 A. To the 23rd.

10:24:44 22 Q. Okay.

10:24:44 23 A. And then --

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10:24:46 1 Q. You would have been completing phase 2
10:24:47 2 at that point?

10:24:48 3 A. Yeah, I would have been completing
10:24:49 4 phase 2 then, and then between December 1st and
10:24:54 5 December 29th -- I don't know. I wasn't in
10:25:03 6 a vehicle yet because I was waiting for a vest up
10:25:05 7 in the camera room.

10:25:09 8 Q. Okay. So what would phase 1 have
10:25:11 9 consisted of?

10:25:12 10 Would it just be these training courses that
10:25:14 11 are listed on your training course outline?

10:25:15 12 MS. HUGGINS: Form.

10:25:16 13 THE WITNESS: Phase 1 of academy?

10:25:18 14 BY MR. DAVENPORT:

10:25:18 15 Q. Well, it would have been phase 1 of
10:25:20 16 your Buffalo Police Department field training,
10:25:22 17 correct?

10:25:24 18 MS. HUGGINS: Form.

10:25:26 19 BY MR. DAVENPORT:

10:25:26 20 Q. Because I -- I guess what you're saying
10:25:28 21 is that phase 2 was completed and you began your
10:25:31 22 field training on November 23rd, correct?

10:25:33 23 A. Yeah. Yeah.

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10:25:34 1 Q. Was there a phase 1 specifically just
10:25:36 2 for --

10:25:36 3 A. They didn't --

10:25:36 4 Q. -- the police department?

10:25:36 5 A. They didn't -- no. They didn't -- they
10:25:39 6 didn't call it anything like that.

10:25:40 7 We just went straight from phase 2 of police
10:25:43 8 academy, straight to the academy unit at -- at
10:25:46 9 headquarters, and we just sat in there and got all
10:25:49 10 these classes.

10:25:50 11 Q. Okay. So it would have been phase 2 at
10:25:58 12 the Erie County Academy and --

10:25:58 13 A. Yeah. Yeah.

10:25:59 14 Q. -- then phase 2 --

10:25:59 15 THE REPORTER: Hold on. Hold on.

10:25:59 16 THE WITNESS: Sorry.

10:25:59 17 (Discussion off the record.)

10:25:59 18 BY MR. DAVENPORT:

10:26:00 19 Q. Okay. So it would have been phase 2 at
10:26:00 20 the Erie County academy, and then you would have
10:26:00 21 immediately gone into phase 2 at the Buffalo
10:26:03 22 academy?

10:26:03 23 A. Yeah.

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10:26:03 1 Q. Okay. So there's no phase 1 at the

10:26:06 2 Buffalo --

10:26:06 3 A. No.

10:26:07 4 Q. -- training academy? Okay.

10:26:09 5 So now phase 2, is there a mix of actually

10:26:13 6 being out in the field, as well as classroom

10:26:16 7 training, or was it just limited to classroom

10:26:19 8 training at that point?

10:26:20 9 A. Not -- they're not concurrent. It's
10:26:23 10 just classroom training, then we were waiting for
10:26:27 11 our gear up in the camera room, and then once we
10:26:31 12 got our gear, then we went to field training.

10:26:33 13 Q. Besides the security vest, was there
10:26:36 14 any other equipment that you needed at that time?

10:26:38 15 A. That was the only thing I was waiting
10:26:40 16 on.

10:26:40 17 Q. Okay. What other -- other equipment do
10:26:45 18 they give you as a field training officer?

10:26:47 19 A. Your duty belt and your -- your
10:26:49 20 assignment room.

10:26:51 21 MS. HUGGINS: Just slow down too.

10:26:53 22 THE WITNESS: Okay.

10:26:53 23 MS. HUGGINS: You're speaking fast.

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10:26:56 1 BY MR. DAVENPORT:

10:26:57 2 Q. So now this vest that they gave to you,
10:26:59 3 were you wearing that immediately when you went out
10:27:01 4 into the field?

10:27:01 5 A. Yes.

10:27:02 6 Q. And when did you receive that again?

10:27:07 7 A. I don't remember.

10:27:08 8 Q. Would it have been between November --
10:27:09 9 or December 1st of 2016 and December 29th of 2016?

10:27:14 10 A. Yeah. Closer to the 29th.

10:27:16 11 Q. Closer to the 29th?

10:27:18 12 So what were you doing from December 1st of
10:27:20 13 2016 to December 29th of 2016?

10:27:24 14 A. Sitting around at headquarters and then
10:27:26 15 sitting around in the camera room at headquarters.

10:27:30 16 Q. Okay. What kinds of things would they
10:27:34 17 have you doing when you were sitting there?

10:27:38 18 A. In the camera room, observing city
10:27:41 19 camera locations and just writing things down of
10:27:43 20 what we were observing.

10:27:47 21 Q. So you would have been observing city
10:27:49 22 cameras. Where would those cameras typically be
10:27:53 23 located?

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10:27:53 1 A. All over. All over the city.

10:27:56 2 Intersections.

10:27:56 3 Q. Would -- would they be located in -- so
10:27:58 4 you -- you eventually went to C District, correct?

10:28:01 5 A. Yes.

10:28:01 6 Q. Would some of those cameras be located
10:28:03 7 in C District?

10:28:04 8 A. Yes.

10:28:04 9 Q. Did they have you exclusively looking
10:28:06 10 at those cameras at C District?

10:28:07 11 A. No.

10:28:08 12 Q. They would have been in A District,
10:28:09 13 B District, C District?

10:28:11 14 MS. HUGGINS: She needs a verbal answer.

10:28:13 15 THE WITNESS: Yes. I'm sorry. Yes.

10:28:15 16 BY MR. DAVENPORT:

10:28:15 17 Q. So were you there, looking at these
10:28:18 18 cameras, with any other lieutenants or other field
10:28:22 19 training -- or other police officers who were out
10:28:25 20 in the field?

10:28:25 21 A. I don't think there were any
10:28:27 22 lieutenants. There was 14 to 16 other police
10:28:33 23 officers that were with -- with me.

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10:28:38 1 Q. Where were these other police officers?

10:28:40 2 Where were they located?

10:28:42 3 Were they also in the C District, or were
10:28:44 4 they in other districts?

10:28:45 5 A. No. No. They were in other districts
10:28:47 6 too.

10:28:47 7 Q. Okay. Were they all field training
10:28:49 8 officers?

10:28:50 9 A. No. These were probationary officers.

10:28:54 10 Q. They were probationary officers?

10:28:56 11 So what kinds of things would you observe on
10:28:58 12 these cameras?

10:29:00 13 MS. HUGGINS: Form.

10:29:03 14 THE WITNESS: At -- at the time, I would say
10:29:07 15 I didn't -- we didn't really know what we were
10:29:09 16 looking at. It was just people walking around.

10:29:11 17 BY MR. DAVENPORT:

10:29:12 18 Q. Did they ever say, you know, this
10:29:14 19 person's committing a crime? You know, we need to
10:29:18 20 dispatch police officers over into that area?

10:29:20 21 A. No. It was just us in the room. There
10:29:23 22 was no one --

10:29:24 23 Q. So what kinds of --

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10:29:25 1 A. -- with us.

10:29:26 2 Q. -- things were you guys looking for on

10:29:28 3 those cameras?

10:29:31 4 A. I don't remember at the time. We

10:29:32 5 weren't given much instruction.

10:29:34 6 Q. Okay. Were you instructed to take

10:29:36 7 notes on what you saw?

10:29:38 8 A. We were.

10:29:39 9 Q. And did you have to turn those notes

10:29:41 10 over to a lieutenant or anybody else to check your

10:29:43 11 work?

10:29:43 12 A. No.

10:29:44 13 Q. You just kept those for yourself?

10:29:46 14 A. I threw mine out, I believe.

10:29:48 15 Q. Okay. Did you have to report to

10:29:49 16 anybody what you saw on those cameras?

10:29:51 17 A. No.

10:29:53 18 Q. Did you have any cameras that were

10:29:55 19 located on Schmarbeck Avenue?

10:29:58 20 A. No.

10:30:01 21 Q. Where, typically, would these cameras

10:30:04 22 be located?

10:30:05 23 Would they be mostly at busy intersections

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10:30:07 1 or businesses?

10:30:08 2 MS. HUGGINS: Form.

10:30:10 3 THE WITNESS: I don't know the rhyme or
10:30:13 4 reason to where the cameras are placed.

10:30:16 5 BY MR. DAVENPORT:

10:30:17 6 Q. So this is what you would have done
10:30:19 7 from December 1st, 2016, to December 29th of 2016,
10:30:23 8 correct?

10:30:24 9 A. I don't know if it's exactly until the
10:30:26 10 29th. I got my vest a week -- a week or so before
10:30:33 11 the incident.

10:30:34 12 Q. Okay.

10:30:36 13 A. So --

10:30:36 14 Q. So you would have received that either
10:30:39 15 shortly before or right around Christmas of 2016?

10:30:42 16 A. Yeah.

10:30:44 17 Q. Did you immediately go out into the
10:30:46 18 field after that?

10:30:46 19 A. Yes.

10:30:47 20 Q. Who did you go out with?

10:30:49 21 Who -- who was, you know, taking you around
10:30:51 22 to help you with your training?

10:30:53 23 A. Police Officer Schultz.

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10:30:55 1 Q. Did you do any other training with any
10:30:56 2 other officers at that time?

10:30:58 3 A. No.

10:30:59 4 Q. How long did your training last for?

10:31:01 5 A. 16 weeks.

10:31:03 6 Q. And so that 16 weeks would have been
10:31:06 7 beginning on November 4th of 2016, or would it have
10:31:10 8 been beginning when you received your vest in
10:31:14 9 December of 2016?

10:31:14 10 A. The day I received my vest.

10:31:17 11 Q. Okay. And so those 16 weeks were just
10:31:19 12 with Officer Schultz?

10:31:21 13 A. Yes.

10:31:24 14 Q. What kinds of things would you -- what
10:31:27 15 kinds of calls would you make with Officer Schultz?

10:31:30 16 A. Our calls --

10:31:32 17 MS. HUGGINS: Form.

10:31:33 18 THE WITNESS: Our calls varied. Shootings,
10:31:37 19 domestics, car accidents, unknown troubles.

10:31:42 20 BY MR. DAVENPORT:

10:31:43 21 Q. Do you remember the first week of
10:31:44 22 training with Officer Schultz?

10:31:47 23 A. I remember the first day.

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10:31:48 1 Q. The first day? What happened on the
10:31:51 2 first day?

10:31:51 3 A. There was a shots fired on Deshler.

10:31:54 4 Q. Did you respond to that call?

10:31:56 5 A. Yes.

10:31:56 6 Q. With Officer Schultz?

10:31:58 7 A. Yes.

10:31:59 8 Q. What was the outcome of that call?

10:32:03 9 A. Afternoon -- the afternoon shift took
10:32:07 10 it over, and me and Karl Schultz left around
10:32:13 11 10 minutes before 4 because we were done.

10:32:16 12 Q. Were you working the day shift at the
10:32:17 13 time then?

10:32:18 14 A. We were working the day shift, yeah.

10:32:19 15 Q. Did you work the day shift after your
10:32:22 16 first 16 weeks?

10:32:23 17 A. No. I went to afternoons.

10:32:24 18 Q. Afternoon shift?

10:32:25 19 Did you work any other shifts besides
10:32:26 20 day shift and afternoon shift?

10:32:28 21 A. No.

10:32:30 22 Q. So what time, approximately, did you
10:32:33 23 recall to that call on your first day?

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10:32:38 1 A. Later in the day. I'm not -- I don't
10:32:41 2 remember.

10:32:41 3 Q. Do you remember approximately how long
10:32:42 4 you were at that first call for?

10:32:47 5 A. I do not know. I don't remember.

10:32:49 6 Q. Was anybody injured at that call?

10:32:51 7 A. No.

10:32:56 8 Q. So how do you typically begin each day,
10:33:02 9 you know, during your first 16 weeks -- we'll --
10:33:04 10 we'll start with your first 16 weeks.

10:33:06 11 During your first 16 weeks, how would you
10:33:08 12 begin each shift during the day shift?

10:33:12 13 A. We show up to work at 5:30. We get
10:33:17 14 dressed. 6 o'clock is brief by the lieutenant.
10:33:20 15 Lieutenant McHugh. And then we start going to
10:33:25 16 calls.

10:33:25 17 Q. Was Lieutenant McHugh your lieutenant
10:33:27 18 at the time?

10:33:27 19 A. Yes.

10:33:29 20 Q. Did you report to any other lieutenants
10:33:31 21 at that time?

10:33:32 22 A. No.

10:33:36 23 Q. Did you have a set schedule for when

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10:33:38 1 you would work during that time, besides the day
10:33:40 2 shift? Did you have set days that you would work?

10:33:43 3 A. We work four days on, four days off;
10:33:47 4 four days on, three days off.

10:33:51 5 Q. And that was consistent for your entire
10:33:53 6 16 weeks?

10:33:53 7 A. Yes.

10:33:53 8 Q. Do you remember if you worked the day
10:33:55 9 before the incident on January 1st, 2016 -- or
10:34:02 10 2017?

10:34:03 11 A. I don't remember.

10:34:03 12 Q. Do you remember if you worked the day
10:34:04 13 after?

10:34:09 14 A. I don't, no. Sorry.

10:34:11 15 Q. Do you remember what you did the night
10:34:12 16 before January 1st, 20 -- 2017?

10:34:18 17 A. No.

10:34:19 18 Q. Did you celebrate the new year?

10:34:21 19 A. No.

10:34:21 20 Q. No?

10:34:22 21 A. No.

10:34:23 22 Q. What time did you report to work on
10:34:29 23 January 1st, 2017?

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10:34:29 1 A. 6. 6 a.m.

10:34:30 2 Q. Okay. And did you get a briefing from

10:34:34 3 Lieutenant McHugh?

10:34:35 4 A. Yes.

10:34:36 5 Q. Do you remember what he said that day?

10:34:38 6 A. I do not.

10:34:40 7 Q. Do you remember if you made any calls

10:34:43 8 before going to Schmarbeck?

10:34:45 9 A. If I -- I'm sorry?

10:34:46 10 MS. HUGGINS: Form.

10:34:46 11 BY MR. DAVENPORT:

10:34:47 12 Q. Did you remember responding to any

10:34:49 13 calls before going to Schmarbeck?

10:34:52 14 A. One. I responded to the first call.

10:34:55 15 I think it was a robbery.

10:34:56 16 Q. Okay. Approximately what time was that

10:35:09 17 robbery that you responded to?

10:35:12 18 A. It was early. I don't remember,

10:35:16 19 though.

10:35:16 20 Q. Was it before you arrived at Schmarbeck

10:35:21 21 or was it on Schmarbeck?

10:35:22 22 A. It was before Schmarbeck.

10:35:25 23 Q. Okay. So I'm going to show you what's

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10:35:27 1 been marked as Exhibit 7.

10:35:42 2 So the only robbery that I'm finding is on
10:35:47 3 Schmarbeck. Do you see any other robberies or
10:35:50 4 anything that could possibly have been a robbery?

10:35:52 5 A. Well, Schmarbeck is a larceny, but
10:35:55 6 Sattler was the robbery.

10:35:56 7 Q. Okay. So it's listed as a fight.

10:35:59 8 Do you know why it was listed as a fight instead
10:36:02 9 of a robbery?

10:36:02 10 A. I don't. I don't know why that's
10:36:04 11 listed as a fight.

10:36:05 12 Q. So what was that situation? What
10:36:09 13 happened there?

10:36:12 14 MS. HUGGINS: Form. You can answer.

10:36:16 15 THE WITNESS: I don't remember the nature of
10:36:19 16 the call, because Karl was talking to the
10:36:25 17 complainant, but I looked down a driveway and
10:36:28 18 a dude was hopping the fence, and apparently that
10:36:31 19 was the guy that we were looking for.

10:36:32 20 BY MR. DAVENPORT:

10:36:32 21 Q. Did you go after him?

10:36:33 22 A. I didn't.

10:36:34 23 Q. Did you catch him?

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10:36:35 1 A. I didn't.

10:36:35 2 Q. Did Karl catch him?

10:36:38 3 A. No. There were other officers that

10:36:41 4 caught him.

10:36:42 5 Q. Would they have been other C District

10:36:45 6 officers?

10:36:45 7 A. Yes.

10:36:46 8 Q. Do you remember who?

10:36:47 9 A. I don't.

10:36:48 10 Q. If you saw a list of officers that were

10:36:51 11 working that shift that day, would that possibly

10:36:53 12 refresh your recollection?

10:36:54 13 A. It's -- it's not going to, just because

10:36:59 14 I was so brand new, I wouldn't know who -- I

10:37:06 15 wouldn't know who caught him.

10:37:07 16 Q. Okay. So how did you decide, between

10:37:12 17 you and Karl, who would go to go speak with the

10:37:14 18 person initially? Who would leave the car to go

10:37:17 19 speak with somebody?

10:37:18 20 MS. HUGGINS: Form.

10:37:19 21 THE WITNESS: At -- at this point in time,

10:37:20 22 I'm so brand new that Karl is doing everything.

10:37:23 23 BY MR. DAVENPORT:

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10:37:23 1 Q. Would there have been any times that
10:37:25 2 you would have gone to go speak with the
10:37:27 3 complainant rather than Karl?

10:37:29 4 A. On -- on things that weren't as high of
10:37:34 5 a priority.

10:37:35 6 Q. Okay.

10:37:35 7 A. Maybe things that are less dangerous.

10:37:37 8 Q. Okay. Was there any set priority that
10:37:42 9 it would be Karl going instead of you to go make
10:37:45 10 that first initial contact with the complainant?

10:37:48 11 MS. HUGGINS: Form.

10:37:48 12 THE WITNESS: No. He -- he would just
10:37:53 13 observe whether or not it was something that he
10:37:56 14 wanted me to handle.

10:37:58 15 BY MR. DAVENPORT:

10:37:59 16 Q. Okay. And how would he make that
10:38:00 17 decision?

10:38:00 18 MS. HUGGINS: Form.

10:38:01 19 THE WITNESS: I can't -- I can't answer
10:38:02 20 that. You would have to ask -- ask him.

10:38:05 21 BY MR. DAVENPORT:

10:38:05 22 Q. What kinds of calls would he allow you
10:38:07 23 to go speak with the complainant rather than Karl

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10:38:10 1 to go speak with the complainant?

10:38:15 2 A. I -- I don't remember the nature of the
10:38:17 3 call, but I know he let me do the 33 Schmarbeck
10:38:22 4 call.

10:38:22 5 Q. Do you remember if he let you do -- to
10:38:25 6 go speak with the complainant for any of the other
10:38:27 7 calls that you responded to before 33 Schmarbeck?

10:38:29 8 A. I don't.

10:38:31 9 Q. So this -- this first call where there
10:38:34 10 was an accident or injury over at Sycamore, and the
10:38:38 11 time would have been 6:14 a.m., do you remember
10:38:41 12 that call?

10:38:42 13 A. I don't.

10:38:42 14 Q. No?

10:38:44 15 What about the alarm that was at
10:38:46 16 1830 Genesee Street?

10:38:48 17 A. I don't remember.

10:38:49 18 Q. Do you know why, for that accident or
10:38:52 19 injury, you would have been going to the next call
10:38:56 20 four minutes after the accident or injury call?

10:39:01 21 A. What do --

10:39:01 22 Q. So --

10:39:03 23 A. -- you mean? Just -- just why it goes

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10:39:03 1 from 6:14 to 6:18?

10:39:06 2 Q. Well, I -- I guess what I'm saying is:
10:39:08 3 If there's an accident or injury that you responded
10:39:09 4 to, would you know why it would only take four
10:39:12 5 minutes for responding to that accident or injury?

10:39:15 6 A. I don't remember -- I don't remember
10:39:18 7 the specifics of that.

10:39:20 8 Q. Okay. Did you ever respond to any
10:39:23 9 other accidents or injuries that day?

10:39:30 10 A. Yeah. The one on 37 Schmarbeck. And
10:39:35 11 then it looks like that's it.

10:39:40 12 Q. After 37 Schmarbeck, where was the next
10:39:45 13 call that you responded to?

10:39:49 14 A. The traffic stop at 1773 Bailey.

10:39:53 15 Q. And what time would that have been at?

10:39:57 16 A. 1314.

10:39:58 17 Q. And that would refer to 1:14 p.m.?

10:40:01 18 A. Yes.

10:40:03 19 Q. So it looks like you were there at that
10:40:06 20 call for four minutes. Would that be accurate?

10:40:10 21 Because your next dispatch --

10:40:11 22 A. Oh, okay.

10:40:12 23 Q. -- was at 1:18 p.m.

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10:40:15 1 A. Yeah, that's what it says.

10:40:18 2 Q. Is there any reason to expect that that

10:40:21 3 would not be accurate?

10:40:22 4 Was there some times where they would have

10:40:26 5 you dispatched for the next call before you had

10:40:29 6 actually finished at the call that you were

10:40:32 7 responding to?

10:40:32 8 MS. HUGGINS: Form. You've just asked two

10:40:34 9 questions in a row.

10:40:35 10 MR. DAVENPORT: So I'll start with my first

10:40:37 11 question.

10:40:40 12 Is there any reason to believe that this

10:40:41 13 record is not accurate?

10:40:43 14 THE WITNESS: No. This is -- this is

10:40:44 15 accurate.

10:40:45 16 BY MR. DAVENPORT:

10:40:45 17 Q. Is there any time where you would

10:40:48 18 respond to a call and it would not be entered on

10:40:51 19 your dispatch monitor until sometime after you had

10:40:55 20 actually responded to that call?

10:40:56 21 A. No. We -- we respond to the calls when

10:40:59 22 they're given.

10:41:00 23 Q. And how do you respond to those calls?

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10:41:02 1 A. We drive there and we go speak to
10:41:04 2 someone.

10:41:04 3 Q. Do you have to call in when you're
10:41:07 4 responding to a call?

10:41:09 5 A. Can you rephrase that?

10:41:11 6 Q. Do you have to radio in when you're
10:41:13 7 responding to a call?

10:41:16 8 A. They'll dispatch a call and then we
10:41:18 9 say, clear, and then we go to it.

10:41:21 10 Q. Is there any other way to respond to
10:41:24 11 a call and have it entered on this form?

10:41:28 12 A. I mean, if these are -- if these are
10:41:30 13 self-initiated traffic stops, we call radio and
10:41:32 14 say, hey, we're at a traffic stop.

10:41:34 15 Q. And who enters these entries? Is it
10:41:38 16 made by the Buffalo Police Department or is it made
10:41:40 17 by another entity?

10:41:42 18 A. Dispatch, so, yeah, BPD.

10:41:45 19 Q. It would be the Buffalo Police
10:41:48 20 Department?

10:41:48 21 A. Yeah.

10:41:48 22 Q. They control the dispatching?

10:41:51 23 MS. HUGGINS: Form.

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10:41:52 1 **THE WITNESS:** Who -- yeah, whoever controls
10:41:54 2 the dispatching.

10:41:55 3 **BY MR. DAVENPORT:**

10:41:56 4 **Q.** Okay. Do you know who controls the
10:41:58 5 dispatch? Do you know any individuals who --

10:42:01 6 **A.** No.

10:42:01 7 **Q.** -- are in charge of that?

10:42:03 8 Do you ever speak with them over the radio
10:42:05 9 besides saying clear or that you're responding to
10:42:07 10 a call?

10:42:09 11 **A.** In what context?

10:42:11 12 **Q.** Do you, you know, speak to them about
10:42:13 13 any personal matters?

10:42:14 14 **A.** No.

10:42:15 15 **Q.** Just about work?

10:42:17 16 **A.** Yes.

10:42:17 17 **Q.** Do you ever get names of those
10:42:19 18 individuals?

10:42:21 19 **A.** No, I don't know their names.

10:42:24 20 **Q.** So the criminal mischief that was at
10:42:26 21 1964 Bailey Avenue, do you remember anything about
10:42:29 22 that call?

10:42:30 23 **A.** No.

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10:42:32 1 Q. So I'm actually going to direct your
10:42:34 2 attention to at -- it would be 2:27 p.m., there was
10:42:39 3 an assault that was on North Ogden Street.

10:42:42 4 Do you see where that is?

10:42:45 5 A. Yes.

10:42:48 6 Q. Now, that says that you were at that
10:42:50 7 call until 1816, and that would refer to 6:16 p.m.,
10:42:56 8 correct?

10:42:56 9 MS. HUGGINS: Form.

10:42:57 10 THE WITNESS: Yes.

10:42:58 11 BY MR. DAVENPORT:

10:43:00 12 Q. Do you remember anything about that
10:43:01 13 assault? About that call?

10:43:03 14 A. I do not.

10:43:05 15 Q. Do you have any reason to know why you
10:43:07 16 were there at that call for four hours?

10:43:10 17 A. I do not.

10:43:12 18 Q. Is there any reason to believe that
10:43:15 19 that time would not be accurate for 6:16 p.m.?

10:43:18 20 A. I do not know.

10:43:25 21 Q. How long have you been with the Buffalo
10:43:27 22 Police Department now?

10:43:27 23 A. A little over three years.

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10:43:28 1 Q. Are you still with the C District?

10:43:31 2 A. No.

10:43:31 3 Q. Where are you now?

10:43:32 4 A. I'm in Bravo.

10:43:33 5 Q. How long have you been with the
10:43:34 6 B District?

10:43:35 7 We'll refer to it as B District.

10:43:37 8 A. Since October.

10:43:38 9 Q. And were you with C District prior to
10:43:41 10 that?

10:43:41 11 A. I was in C District prior to that.

10:43:44 12 Q. So that would have been about two years
10:43:45 13 that you were with C District?

10:43:47 14 A. I was in Delta District for two months
10:43:52 15 somewhere in there.

10:43:54 16 Q. That would have been during your time
10:43:56 17 at C District?

10:43:57 18 MS. HUGGINS: Form.

10:43:58 19 BY MR. DAVENPORT:

10:43:58 20 Q. During the two years that you would
10:44:00 21 have been in C District?

10:44:01 22 A. Yeah. Somewhere in there I was in
10:44:02 23 Delta for -- for two months. Two or three months.

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10:44:05 1 Q. And what was that reason for
10:44:06 2 transferring over to Delta District?

10:44:08 3 A. Just wanted to see something new.

10:44:10 4 Q. Okay. Do you get to make that
10:44:12 5 decision, as a police officer, where you want
10:44:13 6 to patrol?

10:44:14 7 A. We have to request a transfer.

10:44:15 8 Q. Okay. And then who approves those
10:44:18 9 transfers?

10:44:20 10 A. Commissioner Lockwood.

10:44:22 11 Q. Okay. Is there any other officers that
10:44:25 12 can approve those transfers?

10:44:27 13 A. It all goes through Commissioner
10:44:31 14 Lockwood.

10:44:31 15 Q. So now to go to C District, you had to
10:44:34 16 request a transfer as well, correct?

10:44:35 17 A. Yes.

10:44:38 18 Q. When did you request that transfer to
10:44:45 19 Bravo District?

10:44:46 20 A. I -- I don't remember. I know I went
10:44:48 21 to Bravo in October, though.

10:44:53 22 Q. When -- was there any time gap
10:45:00 23 in between at C District and Bravo District?

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10:45:02 1 A. I don't know what you mean.

10:45:04 2 Q. Did you finish working at C District

10:45:08 3 and then take some time off before entering in

10:45:10 4 Bravo District?

10:45:11 5 A. No.

10:45:12 6 Q. Okay. After you finished -- completed

10:45:16 7 your first 16 weeks of training in C District, who

10:45:19 8 would you patrol with mostly?

10:45:22 9 A. Other C District officers.

10:45:24 10 Q. Okay. Was there anybody in particular?

10:45:28 11 A. I don't -- I don't understand what you

10:45:30 12 mean. That was my -- my unit.

10:45:32 13 Q. No. I understand that --

10:45:33 14 A. Okay.

10:45:34 15 Q. -- C District was your unit, but we

10:45:36 16 talked about how, you know, during your first

10:45:38 17 16 weeks, you were always with Karl Schultz.

10:45:40 18 A. Oh, okay.

10:45:41 19 Q. So after your first 16 weeks, were

10:45:43 20 there any other officers that you would patrol

10:45:45 21 with besides Karl Schultz?

10:45:47 22 A. Yes. There were other officers at C

10:45:51 23 that were in my platoon. They've all changed and

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10:45:55 1 went to other areas.

10:45:57 2 Q. So going back to going to D District
10:46:02 3 and now B District, were there any reasons for your
10:46:05 4 request to transfer out of C District besides
10:46:07 5 seeing something new?

10:46:09 6 Were you happy in C District?

10:46:11 7 MS. HUGGINS: Form.

10:46:11 8 THE WITNESS: Indifferent. My partner
10:46:17 9 wanted to go to Bravo, so I went with him.

10:46:21 10 BY MR. DAVENPORT:

10:46:21 11 Q. Okay. Who -- who's your partner that
10:46:22 12 wanted to leave?

10:46:23 13 A. Christopher Brigett.

10:46:25 14 Q. Okay. And how do you get assigned
10:46:26 15 a partner in a certain district?

10:46:29 16 A. We can choose.

10:46:30 17 Q. Okay. Was this individual somebody
10:46:33 18 that you chose while you were in C District?

10:46:36 19 A. Yes.

10:46:38 20 Q. And when, approximately, did you make
10:46:42 21 that request to have him be your partner?

10:46:47 22 A. When I came back from Delta.

10:46:49 23 Q. Okay. Did you work with him at all

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10:46:51 1 before you went to Delta District?

10:46:53 2 A. We went to academy together.

10:46:54 3 Q. Okay. Did you patrol with him at all?

10:46:56 4 A. Never.

10:46:57 5 Q. Okay. So he would have been training
10:46:59 6 around the same time as you, correct?

10:47:00 7 A. Same exact time.

10:47:01 8 Q. Okay. Did he receive his vest at the
10:47:03 9 same time?

10:47:08 10 A. I'm unsure.

10:47:09 11 Q. Did he start with the Buffalo training
10:47:10 12 academy approximately at the same time?

10:47:12 13 A. Same time.

10:47:29 14 Q. So I want to go back to your dispatch
10:47:31 15 monitor.

10:47:33 16 So the first time that you went to
10:47:34 17 Schmarbeck on that day was 10:56 a.m., correct?

10:47:40 18 A. Yes. That's what it says, yeah.

10:47:43 19 Q. And you made -- did you happen to drive
10:47:46 20 on Schmarbeck at all as part of your patrol duties
10:47:49 21 prior to that day?

10:47:51 22 A. I don't know. I don't remember.

10:47:55 23 Q. Would you ever make driving through

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10:47:58 1 Schmarbeck part of your normal patrol duties for
10:48:00 2 a day if you weren't responding to a call there?

10:48:03 3 MS. HUGGINS: Form.

10:48:04 4 THE WITNESS: Back then, I -- I can tell you
10:48:08 5 that I don't -- I don't remember.

10:48:15 6 BY MR. DAVENPORT:

10:48:16 7 Q. So even if it wasn't back then,
10:48:17 8 recently, because you were in C District as close
10:48:20 9 to as last year, in 2019, during that time in 2019,
10:48:24 10 would you ever patrol on Schmarbeck if it wasn't
10:48:27 11 for responding to a call there?

10:48:28 12 A. Rarely.

10:48:29 13 Q. Rarely?

10:48:30 14 A. Rarely.

10:48:32 15 Q. Were there any streets that you would
10:48:34 16 typically patrol, as opposed to others?

10:48:36 17 A. Broadway.

10:48:41 18 Q. Besides Broadway, were there any other
10:48:44 19 streets that you would typically patrol?

10:48:49 20 A. I mean, C District is a small district,
10:48:52 21 so a lot of them, but --

10:49:00 22 Q. I'm sorry. I've just got to find an
10:49:03 23 exhibit really quickly.

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10:49:40 1 So I'm going to show you what's been marked
10:49:43 2 as Exhibit 3.

10:50:06 3 All right. So do you recognize this
10:50:07 4 document?

10:50:09 5 A. This one, yes.

10:50:10 6 Q. And what do you recognize it to be?

10:50:12 7 A. A CAD report.

10:50:14 8 Q. Did you review any documents before
10:50:17 9 your deposition today?

10:50:19 10 A. Yes.

10:50:19 11 Q. And what documents did you review?

10:50:21 12 A. Actually, it was these three.

10:50:23 13 Q. It was just those three documents?

10:50:26 14 MS. HUGGINS: Form. Did you -- did you
10:50:27 15 review this before your testimony today?

10:50:32 16 THE WITNESS: Yeah. Yeah. You did show
10:50:34 17 this to me.

10:50:35 18 MS. HUGGINS: Did you review any other CAD
10:50:37 19 reports?

10:50:38 20 THE WITNESS: No, no other CAD reports.

10:50:40 21 MS. HUGGINS: Did you review the CAD report
10:50:41 22 for 37 Schmarbeck call?

10:50:43 23 THE WITNESS: Oh, yes, I did do that.

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10:50:46 1 I did.

10:50:47 2 BY MR. DAVENPORT:

10:50:47 3 Q. Besides these -- those four documents,
10:50:49 4 did you review any other documents?

10:50:53 5 A. There was a -- that thick one.

10:50:56 6 MS. HUGGINS: Only for the preparation of
10:50:57 7 your testimony --

10:50:57 8 THE WITNESS: Oh.

10:50:58 9 MS. HUGGINS: -- is what he's asking you.

10:50:59 10 THE WITNESS: Then no.

10:51:01 11 BY MR. DAVENPORT:

10:51:02 12 Q. What was the thick document that you're
10:51:03 13 referring to?

10:51:03 14 A. I don't know the name of it.

10:51:05 15 MS. HUGGINS: I think he's referring to the
10:51:06 16 interrogatories, when they were prepared and
10:51:07 17 reviewed by him.

10:51:08 18 MR. DAVENPORT: Okay.

10:51:08 19 MS. HUGGINS: But, obviously, not for the
10:51:10 20 deposition.

10:51:10 21 MR. DAVENPORT: I understand.

10:51:11 22 Did you watch any videos?

10:51:11 23 THE WITNESS: Yes.

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10:51:13 1 BY MR. DAVENPORT:
10:51:13 2 Q. What video did you watch?
10:51:15 3 A. His -- his video.
10:51:16 4 Q. Okay. Did you watch any other videos
10:51:18 5 in preparation for this?
10:51:19 6 A. No.
10:51:21 7 Q. So now going -- turning back to the
10:51:23 8 complaint summary report, this says that it was
10:51:27 9 reported at 10:32 a.m. Does that -- is that
10:51:31 10 accurate to you?
10:51:33 11 A. It -- I mean, if it's on here, yes,
10:51:36 12 it's accurate.
10:51:37 13 Q. Okay. And it says that -- I -- I
10:51:40 14 believe it would refer to you, Kyle Moriarity, and
10:51:44 15 Karl Schultz being dispatched at 10:56 a.m.; is
10:51:49 16 that correct?
10:51:49 17 A. Yeah, 10:56.
10:51:51 18 Q. So what is the difference between
10:51:53 19 dispatched and received?
10:51:57 20 Does -- what -- what does received refer to?
10:51:59 21 Let's start with that.
10:52:00 22 A. I -- I don't know what received means,
10:52:03 23 but 10:56 is when they give us the call.

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10:52:07 1 Received might mean that that's when 911
10:52:12 2 gets it to dispatch.

10:52:14 3 Q. So what is the difference between 911
10:52:17 4 and dispatch?

10:52:19 5 A. Someone calls 911 and then 911 will
10:52:23 6 give it to dispatch to give to us.

10:52:25 7 Q. What does 911 refer to?

10:52:27 8 A. 911 is where the 91 -- 911 call goes
10:52:32 9 to.

10:52:33 10 Q. Okay. And where does it go to?

10:52:35 11 A. Wherever that office is. I have no
10:52:37 12 idea.

10:52:37 13 Q. Okay. And then dispatch is the Buffalo
10:52:42 14 Police Department?

10:52:42 15 A. Yes.

10:52:43 16 Q. Okay. So now there's a 20-minute gap
10:52:47 17 in between it going from 911 to dispatch with the
10:52:52 18 Buffalo Police Department?

10:52:53 19 A. Yes.

10:52:54 20 Q. Okay. Is that typical for 20 minutes
10:52:58 21 to elapse before --

10:53:00 22 A. Yes.

10:53:00 23 MS. HUGGINS: Form.

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10:53:02 1 BY MR. DAVENPORT:

10:53:02 2 Q. Is there a certain type of call that
10:53:04 3 wouldn't take 20 minutes?

10:53:05 4 A. Shootings.

10:53:07 5 Q. Okay. And what would be the typical
10:53:10 6 response time for that?

10:53:11 7 MS. HUGGINS: Form.

10:53:15 8 THE WITNESS: It's -- it's one of those
10:53:16 9 things you just go to immediately.

10:53:18 10 BY MR. DAVENPORT:

10:53:18 11 Q. Okay. Okay. So now when it says
10:53:24 12 dispatched, does that refer to dispatch receiving
10:53:27 13 it, or does that refer to somebody accepting that
10:53:30 14 call from dispatch?

10:53:31 15 MS. HUGGINS: Form.

10:53:32 16 THE WITNESS: Someone accepting the call
10:53:35 17 from dispatch.

10:53:35 18 BY MR. DAVENPORT:

10:53:36 19 Q. And would that somebody be a police
10:53:38 20 officer in the C District?

10:53:39 21 A. Yes.

10:53:42 22 Q. Do you know if you were responding to
10:53:44 23 another call at that time?

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10:53:46 1 A. I don't.

10:53:48 2 Q. So turning back to Exhibit 7 on the

10:53:50 3 dispatch monitor, it looks like you would have been

10:53:55 4 on scene at 145 Sprenger Avenue?

10:54:00 5 A. Yeah.

10:54:00 6 Q. Do you see that?

10:54:01 7 A. Yes.

10:54:02 8 Q. And then it's -- it look -- it appears

10:54:05 9 that you would have been on scene starting at

10:54:07 10 9:27, until would that be 10:56 when you became

10:54:12 11 available?

10:54:12 12 A. Yes.

10:54:12 13 Q. Okay. So turning back towards Exhibit 3,

10:54:21 14 what type of call was it that you responded to at

10:54:25 15 33 Schmarbeck?

10:54:26 16 A. Larceny.

10:54:29 17 Q. And do you remember the nature of that

10:54:30 18 call?

10:54:30 19 A. I don't.

10:54:33 20 Q. Do you remember the individual that you

10:54:34 21 spoke to that day?

10:54:35 22 A. No.

10:54:38 23 Q. When it says that the location is

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10:54:40 1 1800 Broadway and that -- what does that refer
10:54:40 2 to?

10:54:47 3 Do you see on --

10:54:48 4 A. Oh, yeah. I don't know what that
10:54:51 5 refers to.

10:54:53 6 Q. Okay. And then when it says the phone
10:54:55 7 number, do you know what that refers to?

10:54:58 8 A. That's the phone number that was used
10:54:59 9 to call 911.

10:55:01 10 Q. That would have been the complainant's
10:55:02 11 phone call?

10:55:03 12 A. Yeah.

10:55:03 13 Q. Okay. So at 10:33, the entry says,
10:55:11 14 male, known, took items from his home.

10:55:13 15 Do you know what that entry would refer to?

10:55:16 16 A. Whoever the complainant is knows the
10:55:18 17 male who took items from his home.

10:55:20 18 Q. Now, would that information have been
10:55:22 19 conveyed to you who that individual was that took
10:55:26 20 the items from this individual's home?

10:55:28 21 MS. HUGGINS: Form.

10:55:29 22 THE WITNESS: The -- yeah. I mean, the --
10:55:33 23 the complainant would have -- would have told me.

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10:55:35 1 BY MR. DAVENPORT:

10:55:35 2 Q. Do you remember if the complainant told
10:55:37 3 you who took the items from his home?

10:55:39 4 A. I don't remember.

10:55:40 5 Q. Okay. Do you remember if dispatch told
10:55:42 6 you who the individual was that took items from his
10:55:45 7 home?

10:55:45 8 A. No, I don't remember.

10:55:46 9 Q. But that's what that entry refers to is
10:55:50 10 that it's known who the individual was that took
10:55:52 11 items from this complainant's home?

10:55:54 12 A. Yes.

10:55:56 13 Q. Okay. So now the next entry that
10:55:59 14 I want you to look at is en route, C230.

10:56:03 15 What does that refer to?

10:56:04 16 A. We are en route to the location.

10:56:07 17 Q. So when you say we, that refers to Karl
10:56:10 18 Schultz and you?

10:56:11 19 A. Yes.

10:56:12 20 Q. Was your call sign C230?

10:56:15 21 A. Yes.

10:56:15 22 Q. And that's how it would appear on these
10:56:18 23 complaint summary reports?

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10:56:19 1 A. Yes.

10:56:21 2 Q. Now, when it says dispatched at the
10:56:23 3 same time, what does that refer to?

10:56:28 4 A. We're --

10:56:32 5 MS. HUGGINS: Form.

10:56:33 6 THE WITNESS: We're en route at the same
10:56:34 7 time that we're dispatched. They dispatch it and
10:56:36 8 we're on our way.

10:56:38 9 BY MR. DAVENPORT:

10:56:38 10 Q. Okay. Now, do you see that at
10:56:40 11 10:56:53 -- so this would have been six seconds
10:56:43 12 after -- that a disposition has been added --

10:56:45 13 A. Yes.

10:56:45 14 Q. -- to that complaint summary report?

10:56:48 15 So now I guess what you're telling me is
10:56:51 16 that you would have been dispatched and en route at
10:56:54 17 10:56:47 and that you would have disposed of the
10:56:57 18 case in six seconds?

10:56:58 19 MS. HUGGINS: Form.

10:56:59 20 THE WITNESS: I don't -- I don't know why --
10:57:05 21 I don't remember.

10:57:06 22 BY MR. DAVENPORT:

10:57:06 23 Q. And then that last entry says archived

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10:57:09 1 at the same exact time, correct?

10:57:11 2 A. Yes.

10:57:11 3 Q. Okay. And what does archived refer to?

10:57:13 4 A. This was dispo'd as archived for

10:57:19 5 whatever reason.

10:57:21 6 Q. Do officers receive any sort of

10:57:23 7 training for what these complaint summary reports

10:57:24 8 are and how to read them?

10:57:27 9 A. Not -- not really, no.

10:57:28 10 Q. Do they give you any -- does the

10:57:31 11 Buffalo Police Academy give you any training how to

10:57:35 12 make entries onto complaint summary reports?

10:57:36 13 A. We don't make these entries. Dispatch

10:57:39 14 does.

10:57:39 15 Q. Just dispatch?

10:57:40 16 A. Yeah.

10:57:40 17 Q. Is it possible for an officer to make

10:57:43 18 entries on the complaint summary reports?

10:57:45 19 A. We can add things to it.

10:57:47 20 Q. And then how would you make those

10:57:49 21 additions?

10:57:49 22 A. On the computer in the vehicle.

10:57:51 23 Q. Okay. Have you ever done that before?

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10:57:55 1 A. Yes.
10:57:55 2 Q. And did they give you any training on
10:57:57 3 how to make those entries from your computer?

10:57:59 4 A. No.
10:58:03 5 Q. Is it a certain program that you use
10:58:05 6 for making those entries?

10:58:08 7 A. Yes.

10:58:09 8 Q. Do you know what kind of a program that
10:58:11 9 is?

10:58:11 10 A. I do not.

10:58:11 11 Q. Okay. How does that appear on your
10:58:16 12 computer screen?

10:58:19 13 How -- how does the complaint summary report
10:58:21 14 where you can make entries, how does that appear on
10:58:23 15 your computer screen?

10:58:24 16 MS. HUGGINS: Form.

10:58:26 17 THE WITNESS: It does not look like this.

10:58:27 18 BY MR. DAVENPORT:

10:58:28 19 Q. Okay. Can you generally describe what
10:58:30 20 that -- what it kind of looks like?

10:58:32 21 A. Something similar to it. I mean, all
10:58:34 22 this -- all the same information shows up.

10:58:37 23 Q. Okay. And what kinds of changes can

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10:58:41 1 you make from your computer screen?

10:58:43 2 A. I can't change anything. I can just
10:58:45 3 add to it.

10:58:45 4 Q. Okay. Okay. So if -- if the time was
10:58:48 5 incorrect, you wouldn't be able to change that?

10:58:50 6 A. No. I can call dispatch and then they
10:58:53 7 can change it.

10:58:53 8 Q. Okay.

10:58:54 9 A. But it will just continue on with
10:58:56 10 adding. It won't change it change it.

10:58:58 11 Q. Okay. Besides this lawsuit here, have
10:59:03 12 you been involved with any other lawsuits?

10:59:05 13 A. No.

10:59:05 14 Q. What about have you been involved with
10:59:07 15 any criminal proceedings?

10:59:08 16 A. No.

10:59:09 17 MS. HUGGINS: Form. Do you mean as
10:59:11 18 a witness?

10:59:12 19 MR. DAVENPORT: Well, yeah. I was going to
10:59:13 20 get to that.

10:59:14 21 MS. HUGGINS: You were going to get to that.

10:59:14 22 Okay.

10:59:14 23 BY MR. DAVENPORT:

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10:59:15 1 Q. As a witness, have you ever been called
10:59:16 2 to testify in a criminal proceeding?

10:59:19 3 A. Yes.

10:59:20 4 Q. What kinds of documents would you
10:59:21 5 review for those criminal proceedings?

10:59:24 6 A. Similar documents. Arrest forms, crime
10:59:31 7 reports.

10:59:32 8 Q. Would they have you review the
10:59:33 9 complaint summary report?

10:59:34 10 A. Sometimes.

10:59:35 11 Q. And would you have to give testimony on
10:59:37 12 those complaint summary reports?

10:59:38 13 A. Yes.

10:59:38 14 Q. What kinds of things would you have to
10:59:40 15 give testimony on?

10:59:42 16 MS. HUGGINS: Form.

10:59:42 17 BY MR. DAVENPORT:

10:59:43 18 Q. What kinds of entries on the complaint
10:59:44 19 summary report would you have to give testimony on?

10:59:47 20 MS. HUGGINS: Form. You can answer.

10:59:48 21 THE WITNESS: Just like here. Maybe things
10:59:51 22 that were -- were written on here or time frames.

10:59:55 23 BY MR. DAVENPORT:

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10:59:56 1 Q. Have you ever found that a complaint
10:59:58 2 summary report was entered incorrectly?

11:00:02 3 A. I'm confused. What do you mean?

11:00:04 4 Q. In your three years as a Buffalo police
11:00:07 5 officer, have you ever found that a complaint
11:00:09 6 summary report did not accurately reflect a call
11:00:12 7 that you made specifically or a call that you
11:00:14 8 responded to?

11:00:14 9 A. Well, just like -- just like here, they
11:00:17 10 entered it as a fight but it was a robbery.

11:00:19 11 Q. Okay.

11:00:20 12 A. So --

11:00:22 13 Q. So those types of errors then?

11:00:23 14 A. Yeah.

11:00:24 15 Q. Have you ever encountered any
11:00:28 16 discrepancies with the time that are on the
11:00:30 17 complaint summary report?

11:00:34 18 MS. HUGGINS: Form.

11:00:34 19 THE WITNESS: Can you --

11:00:36 20 BY MR. DAVENPORT:

11:00:36 21 Q. So on the complaint summary report it
11:00:37 22 gives a general time for when these actions would
11:00:40 23 have occurred.

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11:00:41 1 Have you ever noticed that there may be
11:00:43 2 errors with the entry for the time on those
11:00:46 3 complaint summary reports?

11:00:46 4 A. No. So everything is computer
11:00:50 5 documented --

11:00:51 6 Q. Right.

11:00:51 7 A. -- as it -- as it occurs. So the entry
11:00:54 8 initiated at 10:32:23. That's when said person
11:00:59 9 called from this number, and then it just -- it
11:01:01 10 just goes.

11:01:02 11 Q. Okay.

11:01:04 12 A. There will never be a discrepancy
11:01:06 13 with -- with the time.

11:01:06 14 Q. Is that entered by a computer or is it
11:01:10 15 entered by a person at dispatch?

11:01:14 16 MS. HUGGINS: Form.

11:01:15 17 THE WITNESS: I don't -- I don't know.

11:01:16 18 MR. DAVENPORT: Okay. So now I want to turn
11:01:19 19 your attention to the video.

11:01:21 20 And would you mind if we could get the
11:01:23 21 lights? That way there's no glare on the screen.

11:01:28 22 They just have to be the lights right in
11:01:31 23 front of the TV.

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11:01:44 1 MS. HUGGINS: It may be the shades to the
11:01:45 2 window.

11:01:46 3 MR. DAVENPORT: Okay. Could we redirect the
11:02:08 4 camera towards the television rather than towards
11:02:10 5 the witness for this segment? Is that possible?

11:02:17 6 THE VIDEOGRAPHER: Could we go off the
11:02:18 7 record?

11:02:18 8 MR. DAVENPORT: Yes, we can.

11:02:18 9 THE VIDEOGRAPHER: Thank you.

11:02:18 10 (A recess was then taken at 11:02 a.m.)

11:17:11 11 (On the record at 11:17 a.m.)

11:17:11 12 MR. DAVENPORT: All right, Mr. Moriarity, so
11:17:14 13 I asked you a few questions about the complaint
11:17:16 14 summary report for the first call that you made on
11:17:18 15 Schmarbeck at 33 Schmarbeck Avenue.

11:17:20 16 We are now going to watch a video that
11:17:23 17 depicts the events from that day for that first
11:17:26 18 call.

11:17:28 19 Mr. Hunt, would you please turn the video
11:17:30 20 camera towards the TV screen.

11:17:32 21 MS. HUGGINS: Form.

11:17:33 22 (Video clip played.)

11:17:33 23 BY MR. DAVENPORT:

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11:17:33 1 Q. So, now, Mr. Moriarity, watching this
11:17:36 2 video, do you remember what the weather was like
11:17:39 3 that day?

11:17:41 4 A. I -- I don't. I don't remember what it
11:17:43 5 was like.

11:17:47 6 Q. Do you remember, was it cold? Was it
11:17:49 7 warm?

11:17:49 8 A. January 1st, it was probably cold.

11:17:50 9 Q. Did you have to wear any sort of a hat
11:17:52 10 or gloves?

11:17:54 11 A. I -- I think I was wearing a beanie.

11:17:57 12 Q. A beanie?

11:17:58 13 A. Yeah.

11:18:00 14 Q. Now, this red van, have you seen this
11:18:02 15 red van before?

11:18:02 16 A. No.

11:18:05 17 Q. Did you happen to see that red van when
11:18:08 18 you appeared on Schmarbeck Avenue on January 1st,
11:18:12 19 2017?

11:18:12 20 A. I don't remember.

11:18:13 21 Q. Seeing this red van here today, does
11:18:15 22 that refresh your recollection of seeing a van that
11:18:18 23 day?

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11:18:19 1 A. No.

11:18:20 2 Q. No?

11:18:21 3 Do you know who this individual is walking

11:18:30 4 out of the van?

11:18:30 5 And I would say for the record that the time

11:18:32 6 stamp is 9:53:16. You don't have to verify the

11:18:36 7 time, but the individual who is now walking out of

11:18:38 8 the van, do you -- do you remember this individual?

11:18:44 9 A. I don't remember.

11:18:45 10 Q. Do you remember talking to that

11:18:47 11 individual on January 1st of 2017?

11:18:49 12 A. I do not.

11:18:55 13 Q. Do you remember what type of a call it

11:18:56 14 was that you responded to on January 1st of 2017,

11:19:01 15 at 33 Schmarbeck?

11:19:02 16 A. From the complaint summary report, it

11:19:04 17 was a larceny.

11:19:05 18 Q. Do you remember anything about that

11:19:07 19 call besides what's written on the complaint

11:19:09 20 summary report?

11:19:09 21 A. I don't.

11:19:12 22 Q. Do you remember how that call was

11:19:14 23 initiated?

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11:19:16 1 A. I -- I -- I don't. It says that it was
11:19:18 2 dispatched.

11:19:21 3 Q. And dispatched refers to you accepting
11:19:23 4 the call and going to that call, correct?

11:19:25 5 A. Yes.

11:19:26 6 Q. But the 911 call was made by the
11:19:28 7 individual, Mike Wolfe?

11:19:29 8 MS. HUGGINS: Form.

11:19:30 9 THE WITNESS: I don't know if it was Mike
11:19:34 10 Wolfe, but someone -- someone called 911.

11:19:37 11 BY MR. DAVENPORT:

11:19:38 12 Q. If I told you that the individual who
11:19:39 13 made the call was Mike Wolfe, would you have any
11:19:41 14 reason to dispute what I say?

11:19:44 15 MS. HUGGINS: Form.

11:19:46 16 BY MR. DAVENPORT:

11:19:46 17 Q. Would you have any reason to believe
11:19:48 18 that it was somebody besides Mike Wolfe?

11:19:49 19 MS. HUGGINS: Form.

11:19:50 20 THE WITNESS: No, but I also don't remember.

11:19:58 21 MR. DAVENPORT: All right.

11:20:01 22 MS. HUGGINS: Do you want to indicate for
11:20:02 23 the record what exhibit you've played?

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11:20:05 1 MR. DAVENPORT: Yes.

11:20:05 2 So for the record, I played the first video
11:20:08 3 of Exhibit A that was turned over to the City as
11:20:10 4 part of our complaint. The last four digits of
11:20:16 5 that video file -- can you go back to it, please?

11:20:23 6 The last four digits of that video file are
11:20:25 7 5252.

11:20:28 8 We are now turning to the second video file
11:20:31 9 of Exhibit A that was provided to the City as part
11:20:35 10 of the plaintiff's complaint. The last four digits
11:20:40 11 are 1342.

11:20:43 12 MS. HUGGINS: The exhibit number, just for
11:20:45 13 the purposes of the deposition.

11:20:46 14 MR. DAVENPORT: This exhibit number is
11:20:48 15 Exhibit number 11.

11:20:51 16 MS. HUGGINS: Thank you.

11:20:59 17 (Video clip played.)

11:20:59 18 BY MR. DAVENPORT:

11:20:59 19 Q. Do you see the three digits that are on
11:21:02 20 top of that police vehicle?

11:21:03 21 A. Yeah. It's kind of clear.

11:21:07 22 Q. And what are those three digits?

11:21:12 23 A. I know the -- I know the truck to be

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11:21:15 1 532.

11:21:16 2 Oh, that's clear now. Yeah, 532.

11:21:18 3 Q. Do you recognize that police vehicle?

11:21:19 4 A. Yes.

11:21:20 5 Q. And what do you recognize it as?

11:21:22 6 A. Buffalo Police vehicle.

11:21:24 7 Q. Have you ever been in that vehicle
11:21:26 8 before?

11:21:26 9 A. Yes.

11:21:28 10 Q. How many times before January 1st?

11:21:31 11 A. I'm -- yeah. I'm unsure.

11:21:33 12 Q. Were you in that vehicle after
11:21:36 13 January 1st of 2017?

11:21:37 14 A. Yeah.

11:21:39 15 Q. Was that a car that you would typically
11:21:41 16 use during your shifts at C District?

11:21:44 17 A. No. We -- we change depending on what
11:21:49 18 goes to the garage because it's broke.

11:21:51 19 Q. Okay. Was there a typical vehicle that
11:21:53 20 you would drive?

11:21:55 21 A. This was Karl's assigned truck.

11:22:00 22 Q. Okay. So Karl Schultz would typically
11:22:03 23 drive this truck then?

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11:22:04 1 A. Yeah. Yeah.

11:22:04 2 Q. So during your first 16 weeks of

11:22:06 3 training, this was the vehicle that you were using?

11:22:08 4 A. Unless it was at the garage, yes.

11:22:11 5 Q. Okay. Now, the video shows that you

11:22:15 6 drove past the red van at first. Do you know why

11:22:18 7 you drove past that red van?

11:22:20 8 A. I do not.

11:22:21 9 Q. The video also shows now, at 10:14, in

11:22:24 10 the top corner, that you were now backing up the

11:22:27 11 vehicle down Schmarbeck to where the red van is.

11:22:30 12 Do you know why you did that?

11:22:30 13 MS. HUGGINS: Form.

11:22:31 14 THE WITNESS: I don't.

11:22:32 15 BY MR. DAVENPORT:

11:22:33 16 Q. Were you going to this individual who

11:22:36 17 was out in the -- the sidewalk at this point?

11:22:39 18 A. I -- I don't remember, but it looks

11:22:43 19 that way.

11:22:47 20 Q. Now, you parked behind the red van.

11:22:49 21 Was there any reason that you would have done that?

11:22:53 22 A. Safety.

11:22:54 23 Q. And what would that safety reason have

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11:22:56 1 been?

11:22:58 2 A. I mean, so I can see someone in case
11:23:02 3 they're going to shoot me or something.

11:23:03 4 Q. Okay. And who would that person have
11:23:05 5 been?

11:23:06 6 MS. HUGGINS: Form.

11:23:07 7 THE WITNESS: Yeah. That -- that's just
11:23:09 8 a -- a general safety thing, so, I mean, I'm pretty
11:23:14 9 sure that that's the complainant for the call.

11:23:18 10 BY MR. DAVENPORT:

11:23:18 11 Q. Okay. So it wasn't necessarily that
11:23:20 12 you were driving behind the red van. You were
11:23:22 13 trying to get a visual on the individual who was
11:23:23 14 standing on the sidewalk, correct?

11:23:25 15 A. Yeah.

11:23:26 16 Q. Okay.

11:23:26 17 A. In the safest way.

11:23:27 18 Q. And that was a safety procedure?

11:23:30 19 A. Yeah.

11:23:30 20 Q. Was that something that Karl Schultz
11:23:32 21 told you to do?

11:23:33 22 A. I -- I don't think he told me to do
11:23:36 23 anything, no.

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11:23:37 1 Q. Was that part of your training with the
11:23:39 2 ECC, Erie County Training Academy?
11:23:43 3 A. No, not really.
11:23:43 4 Q. Was that part of your training with
11:23:45 5 Buffalo Police Academy?
11:23:48 6 A. No, not really.
11:23:49 7 Q. So was that something that you were
11:23:51 8 ever taught by ECC or the Buffalo Police Academy?
11:23:54 9 A. No.
11:23:55 10 Q. So that was just something that you did
11:23:56 11 on your own?
11:23:57 12 A. Yes.
11:23:57 13 Q. Okay. Who's that individual who's
11:24:01 14 getting out of the police vehicle?
11:24:03 15 A. Looks like it's me.
11:24:04 16 Q. Were you driving that day?
11:24:07 17 A. Yes.
11:24:08 18 Q. Did you drive the entire day, or did
11:24:10 19 Karl Schultz drive at any point?
11:24:13 20 A. I don't --
11:24:13 21 Q. On January 1st of 2017?
11:24:16 22 A. I don't know if I drove the whole day.
11:24:19 23 Q. During your first 16 weeks of training,

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11:24:21 1 who predominantly did most of the driving?

11:24:26 2 A. The whole 16 weeks, I would say
11:24:29 3 predominantly it was me.

11:24:30 4 Q. Okay. Was there any reason why you
11:24:32 5 drove instead of Karl?

11:24:34 6 A. So I can learn the streets.

11:24:36 7 Q. Okay. Did he give you any sort of
11:24:40 8 directions on where to go and how to go to a call?

11:24:42 9 A. Tons of directions.

11:24:44 10 Q. Okay. Do you have any sort of a GPS in
11:24:46 11 your vehicle?

11:24:48 12 A. They have a map on the computer that we
11:24:52 13 use, but we do not use it for GPS.

11:24:56 14 Q. Okay. What do you use that map for?

11:25:01 15 A. I -- I never used the map.

11:25:05 16 Q. Okay.

11:25:05 17 A. But people learn how to GPS calls that
11:25:09 18 way. You can also identify where other officers
11:25:12 19 are.

11:25:12 20 Q. Okay. So you had a pretty good
11:25:16 21 understanding of all the streets on C District and
11:25:18 22 you didn't use the map?

11:25:18 23 A. No, I didn't --

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11:25:19 1 MS. HUGGINS: Form.

11:25:20 2 THE WITNESS: I didn't have a good
11:25:21 3 understanding at all. Karl said it's better to
11:25:23 4 learn the streets by driving them rather than
11:25:27 5 GPS-ing them and staring at a computer.

11:25:29 6 BY MR. DAVENPORT:

11:25:29 7 Q. Okay. Would Karl then give you oral
11:25:32 8 directions of where to drive?

11:25:33 9 A. Yes.

11:25:33 10 Q. Okay. And you never referred to that
11:25:35 11 map during your first 16 weeks then?

11:25:39 12 A. I can't say never, but I was --

11:25:43 13 Q. Do you refer to that map at all?

11:25:44 14 MS. HUGGINS: Well --

11:25:45 15 MR. DAVENPORT: He said never.

11:25:46 16 MS. HUGGINS: I wasn't sure if he was
11:25:48 17 finished answering.

11:25:49 18 THE WITNESS: I can't say -- I can't say
11:25:50 19 never, but we really tried hard to stay away from
11:25:55 20 it.

11:25:56 21 BY MR. DAVENPORT:

11:25:57 22 Q. Okay. After your first 16 weeks, have
11:25:58 23 you ever used the map to go respond to a call?

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11:26:02 1 A. Not to respond to a call, but to find
11:26:05 2 out where an officer was.

11:26:06 3 Q. Okay. So now you're walking behind the
11:26:13 4 police vehicle; is that accurate?

11:26:15 5 A. Yeah.

11:26:15 6 Q. Was there any reason why you walked
11:26:17 7 behind the police vehicle rather than in front?

11:26:22 8 A. I don't -- I don't remember that day.

11:26:24 9 Q. Do you remember any difficulty with
11:26:26 10 walking on the Schmarbeck Drive that day?

11:26:30 11 MS. HUGGINS: Form.

11:26:31 12 THE WITNESS: Can you explain that?

11:26:33 13 BY MR. DAVENPORT:

11:26:34 14 Q. Was it icy? Was it slippery?

11:26:44 15 A. I don't remember.

11:26:45 16 Q. Okay.

11:26:46 17 A. I don't -- I don't remember.

11:26:47 18 Q. Okay. What kinds of shoes were you
11:26:50 19 wearing that day?

11:26:51 20 A. Boots.

11:26:52 21 Q. Boots?

11:26:53 22 Did you ever have difficulty walking on
11:26:55 23 streets with those boots?

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11:26:57 1 A. Sometimes.

11:26:58 2 Q. Sometimes?

11:26:58 3 And when would that be?

11:27:00 4 A. Like snow, icy, Buffalo conditions.

11:27:03 5 Q. Did you see any snow on the street that

11:27:05 6 day?

11:27:05 7 A. No.

11:27:06 8 Q. Any ice?

11:27:07 9 A. It's not that clear, but, yeah, I don't

11:27:13 10 know.

11:27:13 11 Q. But as you sit here today, you don't

11:27:16 12 remember any difficulty with walking that day,

11:27:18 13 correct?

11:27:18 14 A. No. There was no -- not for me.

11:27:20 15 Q. Okay. Now, it seems that you are

11:27:28 16 approaching the individual who is standing on the

11:27:30 17 sidewalk; is that correct?

11:27:31 18 A. Yes.

11:27:31 19 Q. Why is it just you that is going out to

11:27:34 20 go speak with that individual?

11:27:38 21 A. Excuse me. I -- I don't remember.

11:27:42 22 I think Karl was letting me deal with a low-priority

11:27:46 23 call.

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11:27:47 1 Q. And how was that determined to be a
11:27:49 2 low-priority call?

11:27:52 3 A. I mean, there's a lot of variables.
11:27:55 4 You look at officer safety. There's -- it -- it
11:27:58 5 says right here priority 5, whereas a shooting
11:28:01 6 would be priority 1.

11:28:02 7 Q. Sure.

11:28:03 8 A. Things like that.

11:28:04 9 I'm not saying that a priority 5 can't go in
11:28:08 10 a southern direction, but assessing the video and
11:28:14 11 assessing the scene, you can kind of determine.

11:28:18 12 Q. Now, prior to January 1st, 2017, have
11:28:22 13 you ever -- had you ever responded to a call on
11:28:24 14 Schmarbeck and spoken with this individual?

11:28:26 15 A. I don't -- I don't remember.

11:28:28 16 Q. Do you recall if after January 1st,
11:28:33 17 2017, did you ever respond to a call on Schmarbeck
11:28:35 18 and speak with this individual?

11:28:36 19 A. No.

11:28:37 20 Q. Now, at this point you know that you're
11:28:39 21 responding to a larceny or a theft, correct?

11:28:42 22 A. Yes.

11:28:43 23 Q. What's part of the normal procedure for

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11:28:46 1 responding to a larceny or theft?

11:28:48 2 Is there a typical procedure that you would
11:28:49 3 follow?

11:28:50 4 MS. HUGGINS: Form.

11:28:54 5 THE WITNESS: I want to get the complainant's
11:28:55 6 name, date of birth, phone number, address, and
11:28:58 7 then find out the story of what had happened.

11:29:01 8 BY MR. DAVENPORT:

11:29:01 9 Q. And how would you get that information?

11:29:04 10 A. Just by talking to him.

11:29:06 11 Q. Would you have to get any sort of
11:29:08 12 identification or anything else to verify what the
11:29:11 13 complainant is telling you?

11:29:12 14 A. ID.

11:29:13 15 Q. ID? Is that typical?

11:29:15 16 A. Yes.

11:29:15 17 Q. Did you do that on this occasion?

11:29:18 18 A. I don't -- I don't remember.

11:29:20 19 Q. Would you have to look at the
11:29:22 20 license plate number for the vehicle? Would --
11:29:25 21 what would Karl Schultz be -- excuse me. Strike
11:29:28 22 that.

11:29:28 23 What would Karl Schultz be doing in the

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11:29:30 1 vehicle at this point?

11:29:31 2 MS. HUGGINS: Form.

11:29:31 3 THE WITNESS: I don't -- I don't know what
11:29:32 4 Karl Schultz could be doing right now.

11:29:34 5 BY MR. DAVENPORT:

11:29:34 6 Q. I'm not asking what could he be doing.
11:29:37 7 I would be asking more so what should he be doing,
11:29:40 8 if he's not going out to go speak with the
11:29:42 9 individual?

11:29:42 10 MS. HUGGINS: Form.

11:29:43 11 THE WITNESS: I -- I think he's just letting
11:29:45 12 me -- me handle a low-priority call to see how I do
11:29:52 13 on it.

11:29:52 14 BY MR. DAVENPORT:

11:29:52 15 Q. Assuming --

11:29:53 16 A. And evaluate me. He's evaluating me.

11:29:56 17 Q. I'm sorry.

11:29:56 18 So assuming that he wasn't evaluating you
11:29:58 19 and that you were out with a partner, somebody
11:30:01 20 who's not in training, would two officers go speak
11:30:06 21 with the individual or would just one officer go
11:30:09 22 speak with the individual?

11:30:09 23 MS. HUGGINS: Form.

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11:30:10 1 THE WITNESS: I -- I'm not going to assume.
11:30:14 2 There's a bunch of different variables that can be
11:30:19 3 taken into place -- or can be taken into
11:30:22 4 consideration for various different calls.

11:30:24 5 BY MR. DAVENPORT:

11:30:24 6 Q. Okay. What types of various
11:30:27 7 circumstances would there be?

11:30:29 8 Would it be based off of the priority of the
11:30:31 9 call?

11:30:34 10 You know, I guess what other variables
11:30:34 11 would you --

11:30:34 12 A. It --

11:30:36 13 Q. -- take into consideration?

11:30:37 14 A. It could be --

11:30:38 15 MS. HUGGINS: Form.

11:30:39 16 THE WITNESS: It could be based off the
11:30:41 17 priority of the call. It could be based off the
11:30:44 18 complainant's actions. It could be based off of
11:30:48 19 third-, fourth-, fifth-party people that are
11:30:51 20 on scene.

11:30:53 21 BY MR. DAVENPORT:

11:30:53 22 Q. If there's one individual complainant,
11:30:56 23 would it be typical for one police officer to go

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11:30:59 1 respond to that individual rather than two police
11:31:02 2 officers for a priority 5 larceny/theft?

11:31:05 3 **MS. HUGGINS:** Form.

11:31:05 4 **THE WITNESS:** No. I've done both depending
11:31:10 5 on other variables.

11:31:13 6 **BY MR. DAVENPORT:**

11:31:13 7 Q. Was there any reason why, on January 1st,
11:31:17 8 2017, there was only one officer that responded and
11:31:19 9 went out to go talk with that individual?

11:31:22 10 A. I don't -- I don't remember why I was
11:31:25 11 the only one that -- that got out --

11:31:29 12 Q. But --

11:31:29 13 A. -- of the vehicle.

11:31:30 14 Q. -- at this point, what kind of
11:31:33 15 information besides that basic information are you
11:31:36 16 trying to get from this complainant?

11:31:38 17 A. Just -- just the basic info.

11:31:40 18 Q. Would you be asking him any details
11:31:42 19 about what his complaint is?

11:31:45 20 **MS. HUGGINS:** Form.

11:31:49 21 **THE WITNESS:** Yeah. I would say that
11:31:50 22 I would be asking him about details about what had
11:31:54 23 happened to him.

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11:31:54 1 BY MR. DAVENPORT:

11:31:54 2 Q. Do you remember if this individual told
11:31:56 3 you -- told you any details about what his
11:31:59 4 complaint was?

11:31:59 5 A. I don't. I don't remember.

11:32:08 6 Q. Do you know what he was pointing to,
11:32:10 7 that individual complainant?

11:32:12 8 A. I don't.

11:32:19 9 Q. Was there any reason why you were still
11:32:21 10 standing on the street, away from the individual on
11:32:25 11 the sidewalk?

11:32:26 12 A. Safety.

11:32:27 13 Q. And what would those safety reasons be?

11:32:31 14 A. When someone's really close to you,
11:32:32 15 they can punch you or stab you.

11:32:56 16 Q. Do you remember if Karl Schultz was
11:32:57 17 saying anything from the police vehicle at this
11:32:59 18 time?

11:32:59 19 A. I don't remember.

11:32:59 20 Q. Can you see if his window is up or down
11:33:01 21 at this time?

11:33:02 22 A. No, not -- no, I can't.

11:33:08 23 Q. Do you remember if his window was up or

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11:33:10 1 down at this time?

11:33:11 2 A. I don't.

11:33:14 3 Q. Do you remember if Karl Schultz was
11:33:17 4 giving you any sort of directions on how to handle
11:33:19 5 the call?

11:33:20 6 A. I don't remember.

11:33:33 7 Q. Now, at the time 10:15:11, there's
11:33:36 8 a second police vehicle arriving. Do you agree
11:33:38 9 with that?

11:33:38 10 A. Yes.

11:33:41 11 Q. Do you happen to --

11:33:42 12 MS. HUGGINS: Form.

11:33:43 13 BY MR. DAVENPORT:

11:33:45 14 Q. Do you agree that there is a second
11:33:47 15 police vehicle arriving at this time?

11:33:49 16 A. Yes.

11:33:49 17 Q. Do you know who the two police officers
11:33:52 18 were in that police vehicle?

11:33:54 19 A. At -- at the time, I believe I just met
11:33:58 20 them.

11:33:59 21 Q. Okay. Do you remember, as you sit here
11:34:03 22 today, who was in that police vehicle?

11:34:05 23 A. As I sit here today, yes.

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11:34:06 1 Q. Who are those two individuals?

11:34:08 2 A. Lauren McDermott and Jenny Velez.

11:34:10 3 Q. Did you have any prior conversations

11:34:12 4 with them before January 1st of 2017?

11:34:15 5 A. No. I -- I just met them this day.

11:34:18 6 Q. Okay. Did you meet them on this first

11:34:20 7 initial call?

11:34:21 8 A. No. I believe I met them on Sattler.

11:34:25 9 Q. Okay. So they were with you at a prior

11:34:29 10 call then, according to -- what exhibit is it?

11:34:35 11 A. 7.

11:34:35 12 Q. -- Exhibit 7, that would have been at

11:34:40 13 8:02 a.m.; is that correct?

11:34:43 14 MS. HUGGINS: Form.

11:34:44 15 THE WITNESS: Looks like 6:51.

11:34:49 16 BY MR. DAVENPORT:

11:34:49 17 Q. Excuse me. I didn't realize that there

11:34:51 18 were two of them.

11:34:54 19 Did you see them when you went back to

11:34:56 20 Sattler at 8:02 a.m.?

11:35:01 21 A. I don't remember if -- it was -- it was

11:35:04 22 during that call, so --

11:35:07 23 Q. It was during the 6:51 a.m. call?

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11:35:09 1 A. Yeah, it was during the 6:51.

11:35:12 2 Q. Okay. Did you speak both with Lauren

11:35:14 3 McDermott and Jenny Velez at that time?

11:35:16 4 A. Nothing beyond an introduction.

11:35:18 5 Q. Okay. Who were the primary officers on

11:35:21 6 that call?

11:35:22 7 A. That was --

11:35:23 8 MS. HUGGINS: Form.

11:35:23 9 THE WITNESS: Yeah. I'd have to see the CAD

11:35:26 10 on that.

11:35:27 11 BY MR. DAVENPORT:

11:35:27 12 Q. Okay.

11:35:28 13 A. Yeah. I'd have to see the -- the

11:35:30 14 complaint summary -- summary report on that.

11:35:32 15 Q. Was it you and Karl Schultz?

11:35:34 16 A. I would -- I would have to see the

11:35:38 17 complaint summary report. I know we were the first

11:35:41 18 ones on scene for that.

11:35:42 19 Q. Okay. Were Jenny Velez and Lauren

11:35:48 20 McDermott -- were they driving around at that time,

11:35:52 21 or were they dispatched to that call?

11:35:54 22 MS. HUGGINS: Form.

11:35:55 23 THE WITNESS: I don't know if they were

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11:35:58 1 driving around or not. I -- yeah, I can't speak on
11:36:07 2 what they were -- what they were doing.

11:36:08 3 And I don't remember if -- if they were
11:36:10 4 dispatched or not. I would need to see the summary
11:36:12 5 report for that.

11:36:13 6 BY MR. DAVENPORT:

11:36:14 7 Q. Okay. Besides introductions, did you
11:36:16 8 have any sort of a conversation with Lauren
11:36:19 9 McDermott and Jenny Velez?

11:36:20 10 A. No.

11:36:20 11 Q. Okay. Besides 6:51 a.m., was the next
11:36:24 12 time that you saw Jenny Velez and Lauren McDermott
11:36:28 13 at 33 Schmarbeck?

11:36:33 14 A. I don't -- I don't remember.

11:36:35 15 Q. Okay. Now, at this time, you're still
11:36:41 16 speaking with the individual complainant, correct?

11:36:44 17 A. Yes.

11:36:46 18 Q. Were Lauren McDermott and Jenny Velez,
11:36:48 19 were they saying anything to you at this time?

11:36:51 20 A. I don't remember. It doesn't -- it
11:36:53 21 doesn't look that way, but I don't remember.

11:36:55 22 Q. Would they have also been evaluating
11:36:57 23 how you responded to the call?

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11:36:58 1 MS. HUGGINS: Form.

11:36:59 2 THE WITNESS: Not an official form of
11:37:02 3 evaluation like Karl.

11:37:04 4 BY MR. DAVENPORT:

11:37:05 5 Q. Okay. Would it be an informal
11:37:06 6 evaluation?

11:37:08 7 A. I don't know if they were evaluating me
11:37:10 8 or not.

11:37:11 9 Q. Okay. What type of an evaluation would
11:37:14 10 Karl Schultz do?

11:37:15 11 Would it just be what he sees, or would he
11:37:18 12 also have to put together some sort of
11:37:21 13 documentation?

11:37:22 14 A. Every day of the 16 weeks, there was
11:37:26 15 a form that he filled out at the end of the -- the
11:37:29 16 shift. There was an evaluation form.

11:37:32 17 Q. Would that evaluation form take into
11:37:34 18 account each of the calls that you made that day,
11:37:36 19 or would it only take into account certain calls
11:37:39 20 that you responded to?

11:37:40 21 A. No. Every call.

11:37:40 22 Q. Every call?

11:37:42 23 Now, you would have taken the background

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11:37:46 1 information for this individual. Would you then go
11:37:50 2 report that background information to Karl Schultz
11:37:52 3 in the car?

11:37:56 4 A. Yeah.

11:37:56 5 Q. Did you do that on this occasion?

11:38:02 6 A. I don't -- I don't remember.

11:38:03 7 Q. Would there be any reason to not report
11:38:05 8 that information to Karl Schultz?

11:38:08 9 A. No, there wouldn't be any reason.

11:38:10 10 Q. Would that be normal police procedure
11:38:13 11 is to take the background information and go report
11:38:15 12 it back to the officer who's in the car?

11:38:17 13 MS. HUGGINS: Form.

11:38:18 14 THE WITNESS: To a field training officer,

11:38:19 15 yes.

11:38:21 16 BY MR. DAVENPORT:

11:38:21 17 Q. Do you remember, did you report that
11:38:24 18 information to Jenny Velez or Lauren McDermott?

11:38:28 19 A. No, I wouldn't -- I wouldn't report it
11:38:30 20 to them. I would report it to Karl.

11:38:46 21 Q. Now, at this moment, you've walked back
11:38:48 22 to the police vehicle, correct?

11:38:49 23 A. Yes.

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11:38:50 1 Q. Did you see yourself, prior to this,
11:38:53 2 grabbing anything from the individual?

11:38:56 3 A. No.

11:39:00 4 Q. But you would have checked his ID or
11:39:02 5 verified his background information with some sort
11:39:05 6 of documentation, correct?

11:39:06 7 MS. HUGGINS: Form.

11:39:06 8 THE WITNESS: I don't know if I verified it
11:39:08 9 or not.

11:39:09 10 BY MR. DAVENPORT:

11:39:09 11 Q. Okay. Would there be any reason to not
11:39:13 12 verify his background information?

11:39:15 13 A. One of the -- I mean, one of the
11:39:17 14 reasons why I'm being evaluated is to make sure
11:39:20 15 I started doing those things, so maybe I -- maybe
11:39:22 16 I didn't do it on scene.

11:39:23 17 Q. Would Karl Schultz have told you -- if
11:39:26 18 you did or did not ask for that ID, would he have
11:39:30 19 told you to go back and get the ID from the
11:39:32 20 individual?

11:39:32 21 A. Yeah, he would have told me.

11:39:34 22 Q. Did he tell you on this occasion?

11:39:36 23 A. I have no idea.

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11:39:36 1 MR. DAVENPORT: So I'm playing the video
11:39:38 2 back, and I want you to see if you did or did not
11:39:41 3 ever grab anything -- any item whatsoever from this
11:39:45 4 individual.

11:39:45 5 (Video clip played.)

11:39:45 6 BY MR. DAVENPORT:

11:40:38 7 Q. Mr. Moriarity, before you went back to
11:40:40 8 your police vehicle, did you ever grab any items or
11:40:42 9 any identification from that individual?

11:40:43 10 A. No.

11:40:45 11 Q. I want you to watch after you've gone
11:40:47 12 back to the police vehicle and spoken -- are you
11:40:49 13 speaking now with Karl Schultz?

11:40:50 14 A. Yes.

11:40:52 15 Q. I want you to now watch and see if you
11:40:53 16 ever go back to the individual to grab any sort of
11:40:56 17 identification.

11:41:08 18 Now, Officer Moriarity, I just also want to
11:41:10 19 ask you very quickly: Why did Lauren McDermott and
11:41:13 20 Jenny Velez pull up their vehicle directly behind
11:41:16 21 that minivan?

11:41:18 22 MS. HUGGINS: Form.

11:41:18 23 THE WITNESS: I have no idea.

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11:41:19 1 BY MR. DAVENPORT:

11:41:19 2 Q. Would there be any Buffalo Police
11:41:21 3 procedure reason why they would have to pull up
11:41:23 4 their vehicle at that time?

11:41:25 5 A. No. I don't know.

11:41:28 6 Q. No safety reasons or anything like
11:41:30 7 that? Okay.

11:41:33 8 MS. HUGGINS: She just needs a verbal
11:41:34 9 answer.

11:41:34 10 THE WITNESS: I'm sorry. I'm -- I'm unsure
11:41:36 11 why they -- why they pulled up their vehicle, if
11:41:38 12 for a safety reason, maybe they were listening,
11:41:41 13 maybe they wanted to hear what I was saying or what
11:41:43 14 the complainant was saying, maybe the complainant
11:41:46 15 was talking to them, maybe Karl was talking to
11:41:48 16 them.

11:41:49 17 BY MR. DAVENPORT:

11:41:49 18 Q. Okay.

11:41:49 19 A. I don't know.

11:41:50 20 Q. All right. Now, Mr. Moriarity, would
11:41:58 21 you agree that at this time, you were talking with
11:42:00 22 the driver of that second police vehicle, or at
11:42:04 23 least standing next to the window of that?

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11:42:06 1 A. I'm standing somewhere in between the
11:42:08 2 two vehicles, yes.

11:42:09 3 Q. Are you facing the second police
11:42:11 4 vehicle?

11:42:12 5 A. It looks that way, yeah.

11:42:13 6 Q. Would there be any reason to stand
11:42:16 7 facing the direction of that police vehicle besides
11:42:19 8 speaking to the driver of that second police
11:42:21 9 vehicle?

11:42:22 10 MS. HUGGINS: Form.

11:42:23 11 THE WITNESS: I mean, if they were talking
11:42:24 12 to me, I'm -- I'm acknowledging the fact that they
11:42:28 13 were talking to me and I'm saying something in
11:42:31 14 response.

11:42:32 15 BY MR. DAVENPORT:

11:42:32 16 Q. Do you remember any details of that
11:42:34 17 conversation?

11:42:35 18 MS. HUGGINS: Form.

11:42:35 19 THE WITNESS: No.

11:42:36 20 BY MR. DAVENPORT:

11:42:36 21 Q. They wouldn't have been giving you any
11:42:39 22 directions on how to handle that call?

11:42:40 23 A. I don't even know if we're -- I don't

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11:42:43 1 know what we're talking about, so no.

11:42:45 2 Q. But there would be no reason why they
11:42:47 3 would give you directions on how to handle the call
11:42:49 4 correctly, correct?

11:42:51 5 A. They could be.

11:43:06 6 Q. Now, Mr. Moriarity, after you went back
11:43:08 7 to the police vehicle, you did not see yourself
11:43:11 8 check the identification of that individual,
11:43:12 9 correct?

11:43:13 10 MS. HUGGINS: Form.

11:43:14 11 THE WITNESS: With the video provided, I --
11:43:20 12 the one that we just watched, I did not go back to
11:43:22 13 the complainant.

11:43:23 14 BY MR. DAVENPORT:

11:43:23 15 Q. Would there be any sort of a document
11:43:25 16 that would say whether you checked the ID of that
11:43:28 17 individual or not?

11:43:32 18 A. No.

11:43:33 19 Q. Is there any sort of a document that's
11:43:36 20 generated for when you do check the ID of somebody?

11:43:43 21 A. No.

11:43:43 22 Q. What would be the reason for checking
11:43:45 23 the ID of somebody?

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11:43:46 1 MS. HUGGINS: Form.

11:43:47 2 THE WITNESS: The reason why I do it is to
11:43:50 3 make sure that I'm talking to the person that
11:43:52 4 they're claiming to be.

11:43:55 5 BY MR. DAVENPORT:

11:43:55 6 Q. And there's no sort of documentation
11:43:56 7 that comes back to verify that this is a valid
11:43:59 8 license or anything else to help you verify that
11:44:04 9 fact?

11:44:04 10 MS. HUGGINS: Form.

11:44:05 11 THE WITNESS: If I'm running someone's
11:44:07 12 license to see if they have a suspended license or
11:44:10 13 something, then yeah, there is, but, I mean, if I'm
11:44:13 14 just looking at an ID and seeing if that's the
11:44:17 15 person that's on the ID, then no, there's no --
11:44:20 16 there's no form.

11:44:21 17 BY MR. DAVENPORT:

11:44:21 18 Q. Okay. So you would only check at that
11:44:22 19 point if there was a suspended license, correct?11:44:27 20 That would be the only time a document is
11:44:28 21 generated?

11:44:29 22 MS. HUGGINS: Form.

11:44:31 23 THE WITNESS: I just want -- I just want to

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11:44:34 1 be clear. It's not -- there's no document that's
11:44:37 2 generated. It just shows up on our computer, the
11:44:40 3 person's info, when we type in their -- their
11:44:44 4 license. There's no -- there's no document that is
11:44:47 5 spit out of a computer or anything like that.

11:44:53 6 **MR. DAVENPORT:** Now, as part of -- and you
11:44:55 7 can turn the camera back towards the witness.

11:45:00 8 Could we also maybe just go off the record
11:45:02 9 just to get the lights back on?

11:45:02 10 **THE VIDEOGRAPHER:** Yes.

11:45:02 11 **MR. DAVENPORT:** Okay.

11:45:02 12 (A recess was then taken at 11:45 a.m.)

11:46:26 13 (On the record at 11:46 a.m.)

11:46:26 14 **BY MR. DAVENPORT:**

11:46:26 15 Q. Now, Mr. Moriarity, we just
11:46:28 16 watched a video of you responding to the call
11:46:31 17 at 33 Schmarbeck. At this time, you would have
11:46:33 18 asked the individual for his background
11:46:37 19 information.

11:46:39 20 Now, at this time, do you -- do you recall
11:46:45 21 what you did after going back to go talk with Karl
11:46:51 22 Schultz?

11:46:52 23 Did you go back to go speak with the

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11:46:53 1 complaint?

11:46:54 2 MS. HUGGINS: Form.

11:46:54 3 THE WITNESS: No, I don't remember.

11:46:55 4 BY MR. DAVENPORT:

11:46:55 5 Q. Do you remember going into the house at
11:46:58 6 that time?

11:46:58 7 A. No, I don't.

11:46:59 8 Q. Okay.

11:47:00 9 A. No.

11:47:01 10 Q. Would there be any sort of a document
11:47:03 11 or some sort of a recording or anything else that
11:47:05 12 would help to refresh your recollection?

11:47:09 13 A. If I went back into the house?

11:47:11 14 Q. If you went back into the house.

11:47:12 15 A. I -- I -- I never -- I don't think
11:47:14 16 I went in the house. But no, I mean, there
11:47:18 17 wouldn't -- there wouldn't be a -- a paper that
11:47:20 18 would say that I did.

11:47:23 19 Q. Now, prior to this occasion on
11:47:26 20 January 1st, have you ever responded to a call
11:47:29 21 where a tenant had stole property from a landlord?

11:47:33 22 A. I don't -- I don't know. I don't
11:47:35 23 remember.

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11:47:35 1 Q. Have you ever responded to one of those
11:47:37 2 types of calls after January 1st of 2017?

11:47:41 3 A. Yes.

11:47:42 4 Q. How many of those types of calls where
11:47:45 5 a tenant stole property from a landlord?

11:47:48 6 A. I don't -- I don't know an approximate
11:47:50 7 number. Not as often as you think.

11:47:56 8 Q. Would it be more or less than ten?

11:48:00 9 A. Over three years, probably more.

11:48:02 10 Q. Would it be more or less than 50?

11:48:06 11 A. Over three years, probably around that
11:48:09 12 maybe.

11:48:11 13 Q. Okay. Did you ever respond to a call
11:48:13 14 on Schmarbeck Avenue where a tenant stole property
11:48:16 15 from a landlord?

11:48:19 16 A. I don't remember if that was the nature
11:48:21 17 of this call, but I -- I haven't had many calls on
11:48:27 18 Schmarbeck, so --

11:48:29 19 Q. Did you ever respond to a call where an
11:48:31 20 individual was walking out with appliances from
11:48:35 21 their apartment that belonged to the landlord?

11:48:41 22 A. I -- no, I don't -- I don't remember.

11:48:43 23 Q. Would you agree with me that if

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11:48:44 1 an individual wanted to take appliances from
11:48:48 2 a landlord, they would need to drive a large
11:48:50 3 vehicle?

11:48:50 4 MS. HUGGINS: Form.

11:48:52 5 THE WITNESS: Yeah, I mean, I don't -- just
11:49:01 6 to pull appliances out of a house and put them in
11:49:03 7 a -- in a vehicle and drive off, I would say that's
11:49:08 8 probably smart to have a big vehicle.

11:49:12 9 BY MR. DAVENPORT:

11:49:12 10 Q. At this time did you know if the
11:49:14 11 individual that you were speaking to at
11:49:16 12 33 Schmarbeck was a tenant or if he owned the
11:49:20 13 property?

11:49:22 14 A. I -- I do not remember the nature of
11:49:25 15 the -- the call and what was said between me and
11:49:28 16 the complainant for 33.

11:49:30 17 Q. Any of those instances that you
11:49:32 18 responded to a tenant who was stealing property
11:49:37 19 from a landlord, were there ever any times where
11:49:39 20 the crime was actually in progress at the time of
11:49:43 21 you responding to that call?

11:49:44 22 A. No.

11:49:44 23 Q. Have you ever witnessed a tenant taking

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11:49:48 1 property from a police -- from a landlord, whether
11:49:51 2 that be in your personal capacity or official
11:49:53 3 capacity?

11:49:55 4 MS. HUGGINS: Form.

11:49:55 5 THE WITNESS: I wouldn't -- yeah, no,
11:49:58 6 I don't think so.

11:49:58 7 BY MR. DAVENPORT:

11:49:59 8 Q. Now, at this time, did you know if
11:50:01 9 the individual had a valid driver's license at
11:50:05 10 33 Schmarbeck?

11:50:06 11 A. From -- from the video that you played
11:50:09 12 for me, I don't -- I didn't see myself on there
11:50:12 13 ever checking his ID, so I don't really know if
11:50:15 14 I did check his ID or not.

11:50:17 15 Q. As part of your normal procedure for
11:50:21 16 responding to a -- an accusation of larceny or
11:50:25 17 theft, would you ever have to check the license
11:50:28 18 plate on a -- a vehicle that is at the location --

11:50:28 19 A. If --

11:50:32 20 Q. -- of the --

11:50:33 21 A. If it's apparent that the vehicle was
11:50:36 22 involved, then yes.

11:50:39 23 Q. Do you recall if on January 1st of 2017,

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11:50:42 1 you had checked the license plate of that red van?

11:50:45 2 A. I don't remember.

11:50:46 3 Q. Would there be any sort of a document
11:50:49 4 that would depict whether you had checked the
11:50:52 5 license of that red van or not?

11:50:58 6 A. I would say -- I would say no.

11:51:04 7 I don't -- I mean, just by the video, again,
11:51:08 8 I don't know if I -- I don't know what the rest
11:51:09 9 of the video showed, so I don't remember if -- if
11:51:14 10 I did anything else with the complainant.

11:51:18 11 Q. Do you recall, as you sit here today,
11:51:22 12 or do you know, as you sit here today, whether that
11:51:24 13 red van belonged to the complainant or not?

11:51:26 14 A. I do not know.

11:51:29 15 Q. So I'm going to ask you a few questions
11:51:32 16 about what happened immediately after that call to
11:51:35 17 33 Schmarbeck.

11:51:38 18 Do you recall an individual walking out into
11:51:44 19 the street after you responded to that call at
11:51:46 20 33 Schmarbeck?

11:51:46 21 MS. HUGGINS: Form.

11:51:47 22 THE WITNESS: The videos that we reviewed,
11:51:51 23 yes, I remember, based off the videos we reviewed.

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11:51:54 1 BY MR. DAVENPORT:

11:51:54 2 Q. But that's only based off of what you
11:51:56 3 saw in the videos?

11:51:59 4 A. Yeah, I mean, I don't -- again, this
11:52:01 5 was a very, very long time ago, and I was very new.

11:52:06 6 Q. As you sit here today, do you know who
11:52:08 7 that individual was that's depicted in the video
11:52:11 8 walking out in the street?

11:52:12 9 MS. HUGGINS: Form.

11:52:13 10 THE WITNESS: Yes.

11:52:13 11 BY MR. DAVENPORT:

11:52:14 12 Q. And who is that individual?

11:52:15 13 A. Mr. Kistner.

11:52:18 14 Q. Okay. Do you remember any of the
11:52:19 15 details of a conversation that could have been had
11:52:24 16 between you and Mr. Kistner or Mr. Schultz and
11:52:27 17 Mr. Kistner when he was out in the street?

11:52:30 18 A. I don't think I had a conversation with
11:52:34 19 Mr. Kistner.

11:52:35 20 Q. Did Mr. Schultz say anything to
11:52:39 21 Mr. Kistner?

11:52:41 22 A. No, I don't -- I don't -- I don't think
11:52:45 23 so. Not when we were trying to drive off.

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11:52:48 1 Q. Why were you trying to drive off as
11:52:51 2 there was an individual in the street?

11:52:53 3 MS. HUGGINS: Form.

11:52:54 4 THE WITNESS: At the time, he wasn't
11:52:57 5 involved with our call, so we were leaving.

11:52:59 6 BY MR. DAVENPORT:

11:52:59 7 Q. Did he ask to speak to the officers at
11:53:01 8 that time?

11:53:02 9 A. I don't know if he said anything to us.

11:53:04 10 Q. Do you know if he said anything to
11:53:06 11 Ms. McDermott or Ms. Velez?

11:53:11 12 A. I -- yeah, I don't know. I wouldn't --

11:53:13 13 MS. HUGGINS: Form.

11:53:13 14 THE WITNESS: I don't remember.

11:53:15 15 BY MR. DAVENPORT:

11:53:16 16 Q. Now, do you recall, as you sit here
11:53:20 17 today, even if it was the video that helped to
11:53:23 18 refresh your recollection, did you drive past the
11:53:25 19 individual who was out in the street?

11:53:27 20 A. I did drive past him, yeah.

11:53:29 21 Q. And how long were you driving -- how
11:53:31 22 far past that individual did you drive?

11:53:34 23 A. I don't remember how -- how far.

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11:53:36 1 Q. Even based off of the video that you
11:53:41 2 saw, would you know approximately how far that you
11:53:44 3 drove?

11:53:44 4 MS. HUGGINS: Form.

11:53:44 5 THE WITNESS: I can't -- I can't judge
11:53:46 6 distance like that.

11:53:47 7 BY MR. DAVENPORT:

11:53:48 8 Q. Do you know approximately how fast you
11:53:49 9 were driving?

11:53:49 10 A. I -- I don't know how fast I was
11:53:51 11 driving. I know from -- it's a small street.
11:53:56 12 I can't get up too high in speeds.

11:53:59 13 Q. How long is Schmarbeck Avenue?

11:54:02 14 A. I wouldn't -- I wouldn't be able to
11:54:03 15 tell you that. It's a small city street, though.

11:54:06 16 Q. Okay. Is it a one way or a two way?

11:54:09 17 A. Two way.

11:54:11 18 Q. Were there any other cars that were
11:54:13 19 coming in the opposite direction from you?

11:54:15 20 MS. HUGGINS: Form.

11:54:16 21 THE WITNESS: I mean, from what the video
11:54:19 22 you guys have, it didn't show any.

11:54:23 23 BY MR. DAVENPORT:

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11:54:24 1 Q. It didn't show any other vehicles
11:54:26 2 coming in the opposite direction?

11:54:27 3 A. It didn't show any, yeah, coming in the
11:54:31 4 opposite direction, that I remember.

11:54:32 5 Q. Do you normally wear your seat belt as
11:54:36 6 you're driving?

11:54:38 7 A. Sometimes.

11:54:40 8 Q. And that's driving a police vehicle,
11:54:42 9 sometimes you wear a seat belt?

11:54:44 10 MS. HUGGINS: Form.

11:54:45 11 THE WITNESS: Yeah, sometimes.

11:54:46 12 BY MR. DAVENPORT:

11:54:47 13 Q. What situations would you wear
11:54:49 14 a seat belt?

11:54:51 15 MS. HUGGINS: Form.

11:54:55 16 THE WITNESS: Situations where I remember or
11:55:00 17 I think it's icy or something.

11:55:04 18 BY MR. DAVENPORT:

11:55:05 19 Q. As a police officer, are you required
11:55:06 20 to wear a seat belt?

11:55:10 21 MS. HUGGINS: Form.

11:55:13 22 THE WITNESS: I'm not sure actually if it's
11:55:15 23 in our Manual of Procedures.

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11:55:17 1 BY MR. DAVENPORT:

11:55:18 2 Q. Is it a violation of the New York
11:55:19 3 traffic law to not wear your seat belt?

11:55:22 4 A. It is a violation for moving cars,
11:55:24 5 yeah, but if you look up our New York State VTL,
11:55:30 6 we're exempt from doing a lot of things.

11:55:32 7 Q. Do you know if you are exempt from
11:55:34 8 wearing a seat belt?

11:55:35 9 A. I don't actually.

11:55:36 10 Q. Was that ever told to you by Karl
11:55:39 11 Schultz?

11:55:39 12 A. No.

11:55:39 13 Q. Was that told to you by any other
11:55:42 14 officer, that you were not -- that you were exempt
11:55:44 15 from wearing a seat belt?

11:55:45 16 A. No.

11:55:45 17 Q. Do you know if Karl Schultz was wearing
11:55:47 18 a seat belt on that day?

11:55:48 19 A. I don't know.

11:55:49 20 Q. Do you know if Jenny Velez and Lauren
11:55:52 21 McDermott were wearing a seat belt on that day?

11:55:54 22 A. They were in a different car. I don't
11:55:56 23 know.

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11:55:56 1 Q. With any of the other officers that you
11:55:58 2 have been with in their -- in the vehicle, have any
11:56:00 3 of those officers worn a seat belt in the police
11:56:03 4 vehicle that you were driving?

11:56:04 5 A. Yeah, some do.

11:56:05 6 MS. HUGGINS: Form.

11:56:06 7 BY MR. DAVENPORT:

11:56:08 8 Q. Now, when you were driving -- when you
11:56:13 9 typically go to go drive a vehicle, do you check
11:56:16 10 any of your mirrors before you pull away?

11:56:19 11 A. Yes.

11:56:19 12 Q. What mirrors do you check?

11:56:21 13 A. I check all of them because a lot of
11:56:23 14 people are different heights.

11:56:24 15 Q. Okay. Now, do you check your mirror to
11:56:27 16 see what's around you or just to make sure that you
11:56:30 17 are able to see and you have a good vantage point
11:56:33 18 for looking through your mirrors?

11:56:35 19 MS. HUGGINS: Form.

11:56:35 20 THE WITNESS: To make sure I have a good
11:56:37 21 vantage point and I can see other cars and people
11:56:40 22 and whatnot.

11:56:41 23 BY MR. DAVENPORT:

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11:56:42 1 Q. Okay. Do you check your left mirror?
11:56:43 2 Your driver's side mirror?
11:56:44 3 A. Yes.
11:56:44 4 Q. Do you check your passenger side
11:56:45 5 mirror?
11:56:45 6 A. Yes.
11:56:46 7 Q. And then do you check your rearview
11:56:48 8 mirror?
11:56:48 9 A. Yeah.
11:56:48 10 Q. Do you look behind you at all?
11:56:49 11 A. No. You can't really see because of
11:56:52 12 the cage.
11:56:52 13 Q. Okay.
11:56:53 14 A. It's a little difficult.
11:56:54 15 Q. Okay. After you make that initial
11:56:56 16 check, do you ever look at your driver's side
11:56:59 17 mirror, your passenger mirror, or your rearview
11:57:02 18 mirror, as you're driving forward?
11:57:03 19 A. Often.
11:57:04 20 Q. Often?
11:57:05 21 And what are you looking for typically?
11:57:08 22 A. Other cars and -- and people to see
11:57:11 23 what -- what they're doing.

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11:57:12 1 Q. Okay. On this occasion do you recall
11:57:16 2 if you looked into your driver's side mirror or
11:57:18 3 your passenger side mirror or your rearview mirror
11:57:22 4 as you were driving away?

11:57:22 5 MS. HUGGINS: Form.

11:57:24 6 THE WITNESS: I remember looking in my
11:57:26 7 driver's side mirror.

11:57:28 8 BY MR. DAVENPORT:

11:57:28 9 Q. Okay. And why were you looking at your
11:57:31 10 driver's side mirror?

11:57:32 11 A. Karl told me to -- he directed my
11:57:35 12 attention to the mirror and said, hold on; let's
11:57:39 13 make sure they get out okay.

11:57:42 14 Q. Okay. Did you stop your vehicle at
11:57:45 15 that point?

11:57:45 16 A. I don't -- I don't remember.

11:57:47 17 Q. Okay. Were you -- were you looking
11:57:52 18 only at your driver's side mirror at that point
11:57:54 19 when Karl said, let's hold on; let's wait to see if
11:57:57 20 they make it out okay?

11:57:59 21 A. In between that and looking forward.

11:58:01 22 Q. Okay. What was the reason for Karl
11:58:06 23 saying, let's make sure that they make it out okay?

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11:58:09 1 MS. HUGGINS: Form.

11:58:09 2 THE WITNESS: At the time, I'm too new.

11:58:12 3 I don't -- I was just doing what he told me --

11:58:15 4 BY MR. DAVENPORT:

11:58:15 5 Q. Okay.

11:58:16 6 A. -- to do.

11:58:17 7 Q. Okay. With your experience that you've

11:58:20 8 gained since this incident, would there be any

11:58:22 9 reason why Karl would have told you to make sure

11:58:25 10 that they make it out okay?

11:58:27 11 MS. HUGGINS: Form.

11:58:27 12 THE WITNESS: Yeah, I mean, there could have

11:58:29 13 been a whole bunch of reasons why someone would

11:58:31 14 walk up to a police vehicle, so for officer safety,

11:58:36 15 he would have told me to look out -- look out the

11:58:39 16 mirror.

11:58:39 17 BY MR. DAVENPORT:

11:58:39 18 Q. Do you know, on January 1st, why that

11:58:42 19 individual was walking up to a police vehicle?

11:58:43 20 MS. HUGGINS: Form.

11:58:44 21 THE WITNESS: I -- I don't. I don't know.

11:58:45 22 BY MR. DAVENPORT:

11:58:46 23 Q. Did Karl Schultz know why that

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11:58:49 1 individual was walking up to a police vehicle?

11:58:50 2 MS. HUGGINS: Form.

11:58:50 3 THE WITNESS: He didn't tell me. No, I don't
11:58:53 4 know.

11:58:53 5 BY MR. DAVENPORT:

11:58:53 6 Q. Do you remember Karl Schultz ever
11:58:55 7 saying, we're leaving, to that individual?

11:59:00 8 A. I -- I don't. I don't remember.

11:59:03 9 Q. Would you have any reason to think that
11:59:04 10 he didn't say, we're leaving?

11:59:08 11 A. Again, I don't -- I don't remember.
11:59:11 12 I don't remember what he said.

11:59:16 13 Q. Now, as Karl Schultz said, wait; let's
11:59:19 14 see what happens; let's make it out of there
11:59:21 15 okay -- let's make sure that they make it out of
11:59:23 16 there okay, were you still driving forward at that
11:59:29 17 time?

11:59:29 18 A. I don't know if I -- I don't remember
11:59:31 19 if I was stopped or slowing to a stop or continuing
11:59:38 20 straight.

11:59:39 21 Q. Okay. As you were driving away -- as
11:59:49 22 your vehicle was driving away from the incident,
11:59:52 23 did you see anything that was happening behind you?

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11:59:57 1 A. I remember having a conversation with
11:59:59 2 Karl about how it looked like Mr. Kistner threw
12:00:05 3 himself on the vehicle. I -- I can't remember
12:00:12 4 exactly how it looked because I was so new. I just
12:00:18 5 remember having the conversation with him.

12:00:19 6 Q. And where did you have that
12:00:21 7 conversation?

12:00:22 8 A. In the -- in the police vehicle.

12:00:24 9 Q. Okay. Would that have been before or
12:00:26 10 after you got out of the police vehicle after the
12:00:32 11 collision was made with Mr. Kistner?

12:00:34 12 MS. HUGGINS: Form.

12:00:34 13 THE WITNESS: That would have been before.

12:00:41 14 BY MR. DAVENPORT:

12:00:41 15 Q. Okay. So the collision would have
12:00:43 16 happened, you would have been in your police
12:00:44 17 vehicle, and Karl Schultz would have told you that
12:00:48 18 Mr. Kistner threw himself at the police vehicle?

12:00:50 19 MS. HUGGINS: Form.

12:00:50 20 THE WITNESS: Like I said, I remember having
12:00:53 21 a conversation talking about it. I don't -- I don't
12:00:54 22 remember if we both said it or if he just said it,
12:00:57 23 but the conversation took place, then we exited the

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12:00:59 1 vehicle, and walked back.

12:01:01 2 BY MR. DAVENPORT:

12:01:01 3 Q. Okay. How long did that conversation

12:01:02 4 last?

12:01:04 5 A. It probably didn't last very long, but
12:01:08 6 I don't know an approximate time.

12:01:11 7 Q. Did he happen to say what your next
12:01:13 8 steps should be at that point?

12:01:16 9 A. I don't remember. I just -- we just
12:01:19 10 got out, I think.

12:01:24 11 Q. Did you exit the police vehicle because
12:01:25 12 Karl Schultz exited the police vehicle?

12:01:27 13 A. Yes.

12:01:28 14 Q. Did he tell you to exit the police
12:01:30 15 vehicle?

12:01:30 16 A. No. I just did it because he did it.

12:01:32 17 Q. As you were walking back to the scene,
12:01:34 18 did you have any personal viewpoints on what had
12:01:40 19 happened at that point?

12:01:41 20 A. Can you -- can you explain that? What
12:01:44 21 do you mean?

12:01:44 22 Q. Did you happen to view yourself any of
12:01:46 23 the incident, or were you just going based off of

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12:01:49 1 what Karl Schultz told you?

12:01:50 2 A. No. We were -- we were both walking
12:01:52 3 back. We would have both seen Mr. Kistner.

12:01:59 4 Q. Where -- where would you have seen
12:02:01 5 Mr. Kistner as you were walking back?

12:02:03 6 MS. HUGGINS: Form.

12:02:03 7 THE WITNESS: On the ground.

12:02:04 8 BY MR. DAVENPORT:

12:02:05 9 Q. So I guess my question is: With what
12:02:08 10 Karl Schultz said, that Mr. Kistner threw himself
12:02:10 11 at the police vehicle, did you happen to watch any
12:02:13 12 of that incident unfold before you exited the
12:02:16 13 police vehicle?

12:02:17 14 A. Well, like I said, I -- I remember
12:02:19 15 having a short conversation with Karl about what
12:02:26 16 we -- what we saw from the mirror, but that would
12:02:31 17 have been it.

12:02:32 18 Q. So now you're saying, what we saw from
12:02:35 19 the mirror. Were you also looking at the driver's
12:02:37 20 side mirror when the collision was made with
12:02:39 21 Mr. Kistner?

12:02:39 22 A. Well, yeah, that's what I said. I said
12:02:42 23 I was looking in the driver's side mirror and

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12:02:43 1 then --

12:02:43 2 Q. And --

12:02:45 3 MS. HUGGINS: Well, let --

12:02:45 4 THE WITNESS: -- and then also looking
12:02:46 5 forward.

12:02:47 6 BY MR. DAVENPORT:

12:02:48 7 Q. Okay. So now you're -- you're looking
12:02:49 8 forward and looking at the driver's side mirror.

12:02:51 9 Were you looking at the driver's side mirror as the
12:02:53 10 collision was made?

12:02:54 11 MS. HUGGINS: Form.

12:02:54 12 THE WITNESS: I don't -- I don't remember.

12:02:58 13 In order for me to have the conversation with Karl,
12:03:03 14 I would say I was looking in the mirror at the
12:03:05 15 time.

12:03:06 16 BY MR. DAVENPORT:

12:03:06 17 Q. And did you have any sort of an opinion
12:03:09 18 of what happened?

12:03:11 19 MS. HUGGINS: Form.

12:03:11 20 THE WITNESS: From -- from my perspective
12:03:17 21 looking into the mirror, it looked as though he
12:03:20 22 threw himself on her vehicle.

12:03:23 23 BY MR. DAVENPORT:

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12:03:24 1 Q. And what led you to believe that
12:03:27 2 Mr. Kistner threw himself on the police vehicle?
12:03:29 3 A. Again, I don't -- all I remember was
12:03:33 4 having the conversation with Karl about his
12:03:36 5 approach to the vehicle, and then from our -- from
12:03:40 6 our perspective, our vehicle was straight down the
12:03:44 7 street, and then we were looking in the mirror, and
12:03:47 8 then her vehicle was -- I don't know the word --
12:03:52 9 just --

12:03:52 10 Q. Diagonal?

12:03:53 11 A. Diagonal, yeah. So it looked like he
12:03:56 12 threw himself on the vehicle.

12:03:57 13 Q. So besides the fact that Mr. Kistner
12:03:59 14 was walking towards the vehicle and her vehicle was
12:04:01 15 diagonal, what other things did you see that led
12:04:04 16 yourself to believe that Mr. Kistner threw himself
12:04:08 17 at the vehicle, rather than the vehicle colliding
12:04:10 18 with Mr. Kistner?

12:04:11 19 MS. HUGGINS: Form.

12:04:11 20 THE WITNESS: Again, long time ago. I was
12:04:13 21 very, very new, and from our -- from my perspective,
12:04:17 22 because I can't speak on Karl's perspective, from
12:04:19 23 my perspective, that's all I was going off of.

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12:04:23 1 BY MR. DAVENPORT:

12:04:23 2 Q. Were you going off of what Karl told

12:04:26 3 you, or were you going off of what you saw?

12:04:27 4 A. No, no, no. From -- from what I saw.

12:04:30 5 Like I said, from my perspective, that's what it

12:04:32 6 looked like. But, I mean, even as I sit here right

12:04:35 7 now, I can't remember what it looked like. It

12:04:38 8 was --

12:04:38 9 Q. Do you remember if the police vehicle

12:04:39 10 that Lauren McDermott or Jenny Velez, that they

12:04:42 11 were in, was that vehicle stopped or was it moving

12:04:46 12 at the time of the collision?

12:04:47 13 MS. HUGGINS: Form.

12:04:47 14 THE WITNESS: From -- from my perspective as

12:04:51 15 I was looking in the mirror, it appeared as though

12:04:53 16 it was stopped.

12:04:55 17 BY MR. DAVENPORT:

12:04:55 18 Q. How long, approximately, was it stopped

12:04:58 19 before that collision was made?

12:05:00 20 MS. HUGGINS: Form.

12:05:00 21 THE WITNESS: I -- I -- I can't judge time

12:05:03 22 like that, but the whole -- the whole incident

12:05:06 23 looked pretty quick.

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12:05:08 1 BY MR. DAVENPORT:

12:05:09 2 Q. Now, what part of Mr. Kistner's body
12:05:11 3 initially contacted the police vehicle?

12:05:14 4 A. I -- I don't remember.

12:05:16 5 Q. Do you recall if Mr. Kistner stuck his
12:05:18 6 arm out at all?

12:05:19 7 A. I don't.

12:05:20 8 Q. Do you recall how he fell to the
12:05:25 9 ground?12:05:26 10 A. I remember having a conversation with
12:05:29 11 Karl about him squatting down, leaning back, and
12:05:36 12 then putting his hand on the ground, and then
12:05:39 13 completing the fall.

12:05:40 14 Q. Now --

12:05:41 15 A. But I don't -- I don't remember seeing
12:05:42 16 that because it was so long ago and I was so
12:05:45 17 brand new.12:05:46 18 Q. Now, was that something that you saw
12:05:48 19 independently, or was that just something that Karl
12:05:50 20 said?

12:05:51 21 Because you're saying that we had it --

12:05:53 22 A. That was -- yeah. That -- well, that
12:05:54 23 was something that I saw and then had the**JACK W. HUNT & ASSOCIATES, INC.**

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12:05:57 1 conversation with Karl about. But, again, as I sit
12:06:02 2 here right now, I don't remember.

12:06:03 3 I mean, it -- it was -- like I said, it was
12:06:04 4 so long ago and I was so brand new.

12:06:06 5 Q. Okay. At the time of the incident, is
12:06:09 6 that what you believed was that Mr. Kistner stuck
12:06:12 7 his arm out and then fell to the ground, as the
12:06:15 8 police vehicle was stopped?

12:06:15 9 A. At the time of the incident, yes, that
12:06:17 10 is -- that is what I believe.

12:06:19 11 Q. Okay. Now, as Mr. Kistner's falling to
12:06:25 12 the ground, is your police vehicle stopped or is it
12:06:27 13 moving at that time?

12:06:28 14 A. I -- I don't remember.

12:06:30 15 Q. When approximately did you stop your
12:06:33 16 police vehicle?

12:06:35 17 A. I -- I don't remember when I stopped
12:06:38 18 it, if it was before the incident or after or
12:06:42 19 during.

12:06:42 20 Q. Did Karl ask you to stop the police
12:06:44 21 vehicle?

12:06:47 22 A. I don't remember if he asked me or not.
12:06:50 23 All I know is I did.

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12:06:51 1 Q. Did you back up the police vehicle
12:06:53 2 after?

12:06:54 3 A. Yes.

12:06:54 4 Q. Okay. Approximately how far did you
12:06:57 5 back up the police vehicle?

12:06:58 6 A. I can't judge distance like that.

12:07:00 7 I don't -- I don't -- I don't know. I don't even
12:07:02 8 know where I stopped it.

12:07:03 9 Q. Okay. Now, why did you back up the
12:07:07 10 police vehicle at that time?

12:07:08 11 A. I probably didn't want to walk very
12:07:11 12 far.

12:07:11 13 Q. Okay.

12:07:14 14 A. Or it was quicker.

12:07:16 15 Could have been either of those.

12:07:17 16 Q. Before you and Karl got out of the car,
12:07:19 17 were Jenny Velez or Lauren McDermott out of the
12:07:23 18 police vehicle?

12:07:23 19 A. Before -- before me and Karl got out of
12:07:25 20 the car?

12:07:26 21 Q. Before you and Karl got out of the car.

12:07:27 22 A. I -- I don't know.

12:07:28 23 Q. Okay.

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12:07:29 1 A. I couldn't -- I couldn't see who was --
12:07:32 2 who was doing what at that point in time. I was
12:07:35 3 focused on reversing.

12:07:36 4 Q. Now, as you were walking back towards
12:07:40 5 Mr. Kistner, were you and Karl having any sort of
12:07:42 6 a conversation?

12:07:43 7 A. I don't remember if we were or not.

12:07:45 8 Q. Okay. As you were walking back towards
12:07:49 9 the police vehicle, what did you notice about
12:07:52 10 Mr. Kistner?

12:07:54 11 A. As we were walking back towards Lauren
12:07:56 12 and --

12:07:57 13 Q. Yes. Back towards the second police
12:07:59 14 vehicle.

12:08:02 15 A. I just remember him being on the
12:08:03 16 ground.

12:08:05 17 Q. Was he saying anything at that time?

12:08:08 18 A. Don't remember.

12:08:09 19 Q. Do you remember any other individuals
12:08:11 20 besides Jim Kistner being out anywhere in that
12:08:16 21 police scene?

12:08:16 22 MS. HUGGINS: Form.

12:08:17 23 THE WITNESS: I don't know for sure if it

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